

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

15-CR-381 (RJD)

United States Courthouse  
Brooklyn, New York

4 -against-

June 19, 2018

9:30 a.m.

5 VITALY KORCHEVSKY and,  
6 VLADISLAV KHALUPSKY

7 Defendants.

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8 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
9 BEFORE THE HONORABLE RAYMOND J. DEARIE  
UNITED STATES SENIOR DISTRICT JUDGE  
BEFORE A JURY

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25 Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

Rivka Teich CSR, RPR, RMR, FCRR  
Official Court Reporter

PROCEEDINGS

1 THE COURTROOM DEPUTY: All Rise.

2 THE COURT: Everybody present.

3 MS. WHALEN: Your Honor, our client is still in the  
4 line. There is a long naturalization line this morning, our  
5 investigator is down there to sort of jump him ahead of the  
6 line.

7 THE COURT: Okay. I'll wait for him then.

8 Mr. Khalupsky has made it through the security  
9 downstairs. While we have a movement, I think our jury is  
10 here, I just want to say very briefly that I took the occasion  
11 last night and earlier this morning to reread Igor Dubovoy's  
12 testimony just to make sure I wasn't missing something. And  
13 to reread and reconsider Ms. Whalen's letter of June 17.

14 I'm not going to characterize the testimony of that  
15 witness or any other witness, at least certainly not at this  
16 point in the proceedings; nor, is it my responsibility or my  
17 jurisdiction generally to do that, perhaps another time.

18 But having read the testimony and considered rather  
19 unusual application, I am not going to grant the reliefs  
20 sought. I'm not going to preclude the father from testifying.  
21 I'm not going to strike the testimony of the son, which in  
22 many respects was supportive of the offense, but neither here  
23 nor there. Nor am I going to instruct the jury as requested.

24 I will, of course, include in my formal instructions  
25 a very strong admonition to the jury how they are to assess

PROCEEDINGS

1 the testimony of anybody who has entered into a cooperation  
2 agreement. And for the moment I'm going to leave it at that.  
3 Let me find out where my jury is.

4 MS. NESTOR: Your Honor, one thing I'd like to put  
5 on the record, a minor point. I want to make sure it's on the  
6 record and I made defense counsel aware of. I'm going to put  
7 Mr. Dubovoy on the stand. I speak Russian, as does he. It  
8 will not interfere with anything. I'm fluent in Russian -- I  
9 speak Russian at a first-grader level. And I just wanted to  
10 put that on the record.

11 THE COURT: We'll be relying on a certified  
12 interpreter.

13 MS. NESTOR: Of course, your Honor.

14 THE COURT: We are missing one, same problem that  
15 Mr. Khalupsky encountered. I'm going to solve that problem.  
16 We're going to fix this problem going forward for parties,  
17 witnesses, most importantly for our jury.

18 Your first witness is Dave Haapaoja, might as well  
19 bring him in.

20 (Witness takes the stand.)

21 THE COURT: Good morning, sir, have a seat.

22 THE WITNESS: Thank you.

23 MS. NESTOR: With the Court's permission may I pass  
24 up the book of Exhibits?

25 THE COURT: Yes, of course.

PROCEEDINGS

1 MS. NESTOR: Thank you, your Honor.

2 (Jury enters.)

3 THE COURT: Good morning. Please be seated  
4 everyone. I understand one or more of you had a little  
5 problem downstairs in the lobby. We're going to try to fix  
6 that problem for you. Going forward just identify yourselves  
7 if you're confronted with a lengthy line. If it's the  
8 difference between being on time and not on time, just simply  
9 identify yourself as a jury in a case on trial before Judge  
10 Dearie. I'm sure the CSOs will expedite your passage through  
11 security. All right, I apologize for that inconvenience this  
12 morning.

13 We're ready with our next witness.

14 MS. NESTOR: May I proceed, your Honor?

15 THE COURT: Please.

16 MS. NESTOR: The Government calls Dave Haapaoja.

17 COURTROOM DEPUTY: Please stand and raise your right  
18 hand.

19 DAVID HAAPAOJA, called as a witness, having been first duly  
20 sworn/affirmed, was examined and testified as follows:

21 THE WITNESS: I do.

22 COURTROOM DEPUTY: State and spell your name for the  
23 record.

24 THE WITNESS: My name is, David Haapaoja,  
25 H-A-A-P-A-O-J-A.

HAAPAOJA - DIRECT - MS. NESTOR

1 DIRECT EXAMINATION

2 BY MS. NESTOR: :

3 Q Where did you work from 2010 until May 2018?

4 A PR Newswire.

5 Q What is PR Newswire?

6 A We take press releases from companies, organizations, and  
7 distribute them publicly in a simultaneous way.

8 Q What are press releases generally?

9 A They are information that companies or organizations want  
10 to make public to the investment community or customers or  
11 just about anybody.

12 Q What types of press releases does PR Newswire distribute?

13 A All kinds. Anywhere from financial press releases, like  
14 quarterly earnings down to product releases, significant  
15 personal announcements, just about anything a company wants to  
16 make known to the marketplace.

17 Q Do you still work at PR Newswire?

18 A I do not.

19 Q Why is that?

20 A I retired six weeks ago.

21 Q Congratulations.

22 A Thank you.

23 Q How long you were with PR Newswire?

24 A Thirty years.

25 Q What was your title right before you retired?

HAAPAOJA - DIRECT - MS. NESTOR

1 A Senior vice president of customer experience.

2 Q How long were you in that position?

3 A Two years.

4 Q And before that, what was your title?

5 A Senior vice president press of global operations.

6 Q Roughly how long were you in that position?

7 A Ten years.

8 Q And focusing on your position as senior vice president of  
9 global operations prior to the 2016 period, what did your  
10 group do?

11 A We have a group responsible to receive the press releases  
12 from customers. We confirm authenticity of both the company  
13 and the sender. We create an order in our system. Then we  
14 process the press release for distribution. And then once it  
15 is time for distribution, then we distribute it.

16 Q How many people did you oversee in that role or in that  
17 group?

18 A About 300.

19 Q What were your responsibilities specifically?

20 A I was responsible for overall customer satisfaction and  
21 meeting that. As well as policies, procedures, how we do  
22 things, that kind of thing.

23 Q What policies and procedures?

24 A What we do when a release comes in, how we do it,  
25 confidentiality around press releases, working with customers

HAAPAOJA - DIRECT - MS. NESTOR

1 to make sure that we meet their needs, and they are happy with  
2 what we do.

3 Q Why are these policies and procedures important to PR  
4 Newswire when it came handing press release information from  
5 customers?

6 A There is really two primary purposes. One is the  
7 confidentiality of the information, to make sure we do exactly  
8 what customers want us to do. The second is meeting the  
9 customer's needs, making sure that they are happy with how we  
10 do it.

11 Q Does PR Newswire have competitors?

12 A Yes.

13 Q Who are they?

14 A Business Wire, Marketwired.

15 Q Why are they considered competitors.

16 A We all go after the same customers, so we are all  
17 competing against one another for all the customers that use  
18 or we would like to have use our services.

19 Q Now you described some of the services or some of the  
20 types of press releases that PR Newswire distributes, does PR  
21 Newswire specialize in any particular business sector?

22 A No, we'll take business from pretty much anyone.

23 Q As far as you know, does Business Wire specialize in any  
24 particular sector?

25 A No.

HAAPAOJA - DIRECT - MS. NESTOR

1 Q How about Marketwired?

2 A No, we all compete for the same group of customers.

3 Q How do customers get press releases to PR Newswire?

4 A Two ways. First is they upload their documents through  
5 our secure online portal or they can e-mail releases to us,  
6 either way.

7 Q Once a document or a press release is uploaded to the  
8 online portal, is it in the PR Newswire system?

9 A Yes, once they hit submit it comes through into a system  
10 that we use to record the orders and process the releases.

11 Q Fair to say once they are sent to you by e-mail, they are  
12 also in the PR Newswire systems?

13 A Yes, they come into the same queue.

14 Q What happens to the press releases once they are uploaded  
15 about by the customers at PR Newswire?

16 A We call the customer back, as I said, to confirm  
17 authenticity, to confirm timing, to make sure that we got it  
18 right. Then we move it over to the processing team who works  
19 and we reformat the document from typically MS Office format  
20 and we need to reformat that into HTML type of format in order  
21 to distribute it to the many places that we send.

22 Q So it goes from a Word document to an HTML document?

23 A Yes.

24 Q What else is done, if anything, to reformat or do to any  
25 of these press releases?



HAAPAOJA - DIRECT - MS. NESTOR

1 A We check through it for obvious errors. We look at  
2 headlines. We look at the opening paragraph. We look at  
3 common names to make sure it's not multiple ways of spelling  
4 them, we do that. We also depending on the customer's  
5 instructions, we either will set it up, format it, get it  
6 done, and send it out immediately. Or we can schedule it in  
7 the system and send it at a time and date that the customer  
8 has specified. Or we can hold it for when they call us and  
9 tell us to send it.

10 Q Does this process take sometime?

11 A Yes. It can be fairly quick, 20 minutes; or it can take  
12 hours.

13 Q Is it important for PR Newswire to ensure that the press  
14 releases are kept confidential between the time they are  
15 uploaded to PR Newswire and the times they are released to the  
16 public?

17 A That's essential.

18 Q Why?

19 A Because depending on the content, the customer has  
20 expectations around what happens then.

21 So in a case of financial documents there is a  
22 market expectation of when that is going to come out. Most  
23 companies announce earnings releases or other things at a  
24 particular time. If those are not done on those times it  
25 causes issues.

HAAPAOJA - DIRECT - MS. NESTOR

1           Additionally, these companies have a whole range of  
2 things that they do around that. So it could be internal  
3 announcements, internal changes, all kinds of things that they  
4 do.

5           So there is a critically factor there for us to make  
6 sure we follow the customer's instructions and we do exactly  
7 what they say.

8 Q       How does PR Newswire go about keeping the customer  
9 information confidential?

10 A       One way is only the people who are working on any of  
11 these documents have access to those documents in the system.  
12 So if in you're in the sales marketing or other parts of the  
13 organization, you don't have access to the systems. We also  
14 have key card access to the areas where the content is stored.  
15 So unless you have key card for that particular area you can't  
16 get in unless you have a card.

17           We confirm the authenticity of both the customer and  
18 the company and the sender. So we have identified specific  
19 individuals as customers who are authorized to send releases  
20 on behalf of that organization. So if it's not someone who we  
21 have in our system as someone who is authorized to do that, we  
22 don't send it until we have confirmation from an authorized  
23 sender. So those are three things that we do.

24 Q       You also talked about the three different ways in which  
25 press releases might be distributed, in a sense, that they are

HAAPAOJA - DIRECT - MS. NESTOR

1 immediate release, scheduled release, then a hold?

2 A That's correct.

3 Q Now is it important for you or PR Newswire to follow the  
4 customer's instructions as to when to disseminate the press  
5 releases?

6 A Yes. Like I said a minute ago, it's really important  
7 that we get that right, so that's also a part of what we  
8 confirm when the release comes in with the customers, to make  
9 sure we both understand we have a timing and the timing  
10 correct.

11 Q Do customers tend to provide with you press releases a  
12 certain amount of time in advance of distribution time and  
13 date?

14 A There is no set time, but certain types of releases have  
15 a longer time than others.

16 Q Is that because more has to be done with those releases?

17 A Yes. In the case of financial releases, they typically  
18 have charts, graphs, things like that that during the  
19 conversion from a Microsoft file to HTML file columns can get  
20 misaligned or something like that, so it takes longer to do  
21 that. We need to make sure when we distribute it it is  
22 actually legible, readable.

23 Q Are changes made to press releases after they are  
24 uploaded to PR Newswire?

25 A Sometimes. It's not uncommon to have things changed.

HAAPAOJA - DIRECT - MS. NESTOR

1 They are typically cosmetic changes, not fundamental to the  
2 release. Any number of changes what I consider to be  
3 cosmetic.

4 Q Can you explain a little more what you mean by cosmetic?

5 A Sure. During the conversion process, we have customers  
6 who are very finicky, so in the financial columns they'll take  
7 a ruler and they'll measure it. They want things moved over  
8 exactly in the same column, that kind of thing. Punctuation  
9 is another thing. A misspelling found could be another.  
10 Those kinds of things.

11 Q Is there a record kept of when a customer provides a  
12 press release to PR Newswire for upload?

13 A Yes.

14 Q Tell us about that.

15 A As soon as a customer uploads a release, either by OCM or  
16 e-mail, there is a date and time stamp that is entered into  
17 our system automatically once the release has been submitted.  
18 So that's kept in the normal course of business.

19 Q Is it kept confidential, is the upload time kept  
20 confidential?

21 A Well, yes, everything about the release is confidential,  
22 even whether we have it.

23 Q When a press release is released to the public, what  
24 happens?

25 A Either, whether we actually physically submit the release

HAAPAOJA - DIRECT - MS. NESTOR

1 or the system does it for the scheduled release, it's sent out  
2 at a specified time. And it's immediately available to  
3 financial news wires such as Dow Jones, Reuters, Bloomberg,  
4 those types of things. It's delivered to news media, print,  
5 broadcast. It's uploaded to websites like Yahoo finance,  
6 other places like that.

7 Q Is that done simultaneously?

8 A Yes.

9 Q As a point of PR Newswire?

10 A Yes.

11 Q What time of day are press releases distributed to the  
12 market?

13 A That depends. Run of the mill press releases tend to go  
14 all day long. Financial press releases are done prior to  
15 market opening or after market closing, almost always. So in  
16 the U.S. our financial markets open at 9:30 a.m. and close at  
17 4:00 p.m. So typically financial releases are sent out prior  
18 to that or after that.

19 Q When you say financial releases you're talking about  
20 earnings, those types of releases?

21 A That's correct.

22 THE COURT: Meaning before opening or after closing.

23 THE WITNESS: Correct.

24 Q When press releases are made public you talked about a  
25 number of the places they are generally published, are you

HAAPAOJA - DIRECT - MS. NESTOR

1 familiar with Factiva?

2 A Yes.

3 Q What is your understanding of what Factiva is?

4 A Factiva is a service website that's an amalgamation of  
5 various kinds of financial data, which PR Newswire is one. So  
6 if you're a subscriber to Factiva, you can go in there and  
7 find all kinds of financial information, as well as the press  
8 releases that are submitted by PR Newswire.

9 Q Do you actually provide those press releases to Factiva,  
10 does PR Newswire?

11 A That's correct. They are on distribution.

12 Q I'm going to show you a CD that's been marked for  
13 identification only as Government's Exhibit 803.

14 MS. NESTOR: Just for the witness.

15 Q Do you see that on your screen?

16 A I do.

17 Q Do you recognize Government's Exhibit 803?

18 A I do.

19 Q How do you recognize it?

20 A It has my initials on it.

21 Q Does it have a date?

22 A It does. 6/11, June 11, 2018.

23 Q Did you review the contents of Government's Exhibit 803  
24 on June 11, 2018?

25 A Yes, I did.

HAAPAOJA - DIRECT - MS. NESTOR

1 Q You reviewed it for accuracy?

2 A I did.

3 Q What is it?

4 A There is data on there from 2008, I believe December 2008  
5 through middle of 2015. And it's a summary of press releases  
6 submitted by PR Newswire. So specific data around those press  
7 releases are on that CD.

8 Q Is it upload and release times?

9 A Yes, among other things.

10 Q Is it specified by which companies are actually releasing  
11 the press releases?

12 A Yes. So there is company names, headline, time in, time  
13 out, some order numbers and other things that are on there  
14 that are part of our system.

15 MS. NESTOR: We move Government's Exhibit 803 into  
16 evidence.

17 THE COURT: You're not suggesting these are all the  
18 releases that PR put out between 2018 and middle of 2015, are  
19 you?

20 THE WITNESS: They are not the releases themselves,  
21 they are the time in and time out time.

22 THE COURT: Of all the releases?

23 THE WITNESS: Yes.

24 THE COURT: Any objection?

25 MS. FELDER: Yes, your Honor. We object on the

HAAPAOJA - DIRECT - MS. NESTOR

1 basis of relevance to the documents that pertain to time  
2 periods outside the scope of the alleged conspiracy,  
3 particularly from 2008 to the 2009. I believe that this  
4 contains matters through 2016 as well.

5 THE COURT: So you're objecting to the portion of  
6 2008 and 2009.

7 MS. FELDER: As well as any time period beyond the  
8 time period of the alleged conspiracy, which I believe is  
9 alleged to end August 2015. There are documents in late 2015  
10 as well as 2016.

11 THE COURT: I note the objection. The objection is  
12 overruled. I'll receive 803 in evidence.

13 (Government Exhibit 803, was received in evidence.)

14 MS. NESTOR: Thank you.

15 BY MS. NESTOR:

16 Q Explain once again what is on the CD in terms of the data  
17 itself?

18 A Yes. So there is multiple rows and multiple columns.  
19 Trying to do this from memory, hang on a second.

20 MS. NESTOR: If we can publish this to the jury?

21 THE COURT: Go ahead. Is that what you want to  
22 publish?

23 MS. NESTOR: So they know what he's talking about.

24 THE COURT: Go ahead.

25 A The first column is the unique order ID, that's put in by



HAAPAOJA - DIRECT - MS. NESTOR

1 our system once the document is received. The next number is  
2 a number that's pulled from the OMC. The third is the time  
3 and date.

4 Q Let me be clear, I don't need you to go through the  
5 columns. What is the general data?

6 A Okay, sure. It's the date and time in, the company name,  
7 the date and time out, the headline of the release, I think  
8 that's the important stuff.

9 Q Was the upload data that you testified to on the CD, is  
10 it voluminous?

11 A Yes, there is a lot of content there.

12 Q Was PR Newswire asked to provide certain press releases  
13 to the Government pursuant to a subpoena?

14 A Yes.

15 Q What was PR Newswire asked to do?

16 A We were asked to provide the uploaded copies, initial  
17 uploaded copies of press releases for six companies.

18 Q Did you actually review that process for pulling those  
19 press releases?

20 A I did.

21 Q I want to show you actually it's in the binder in front  
22 of you for identification only, Government's Exhibits 845,  
23 846, 847, 848, 849, 850. Do you recognize these documents?

24 A Yes.

25 Q What do you recognize them to be?

VOIR DIRE - HAAPAOJA - MR. HEALY

1 A These are the original copies of the press releases that  
2 were sent to PR Newswire on these dates.

3 Q Are they as they are were uploaded to PR Newswire?

4 A Yes.

5 Q Are they fair and accurate representations of the  
6 uploaded press releases that PR Newswire received and pulled?

7 A Yes, they are the uploaded press releases.

8 MS. NESTOR: Your Honor, at this time the Government  
9 requests to move into evidence 845, 846, 847, 848, 849, 850.

10 THE COURT: What is the earliest press release you  
11 have in that set of press releases?

12 THE WITNESS: This set or the ones on the CD?

13 THE COURT: The ones you were just talking about,  
14 845, six, seven so forth.

15 THE WITNESS: The earliest date?

16 THE COURT: Date, yes.

17 MS. NESTOR: Sometime in 2011.

18 THE COURT: 2011. Any objection to these tentative  
19 releases?

20 MR. HEALY: Super brief voir dire, your Honor?

21 THE COURT: Go ahead.

22 THE WITNESS: What year?

23 THE COURT: That's all right, we had the answer. Go  
24 ahead, sir.

25 VOIR DIRE EXAMINATION

VOIR DIRE - HAAPAOJA - MR. HEALY

1 BY MR. HEALY: :

2 Q Did you pull these yourself or did someone else pull  
3 these off the server?

4 A Someone else pulled them.

5 Q How did they come into your possession?

6 A They were initially shown to me by the Government and  
7 then I went back to the people who pulled them and got more  
8 information as to how that was done and what they did and some  
9 other things.

10 Q Do you recall when that was?

11 A Yes. It was, well exactly, it was about two weeks ago.

12 Q Fair to say that's after you retired from PR Newswire?

13 A Yes.

14 MR. HEALY: Your Honor, we would object. The  
15 witness cannot lay a specific foundation. He was not an  
16 employee of the company. He didn't pull the records. He has  
17 no knowledge if anything changed in the months that he left,  
18 how the records were stored and maintained.

19 THE COURT: The word objection is enough. If I  
20 don't understand the nature of your objection I'll invite you  
21 to sidebar.

22 MR. HEALY: I apologize.

23 THE COURT: Do you understand?

24 MR. HEALY: Yes, your Honor.

25 THE COURT: Overruled. Go ahead.

VOIR DIRE - HAAPAOJA - MR. HEALY

1 (Government Exhibit 845, was received in evidence.)

2 MS. NESTOR: I'm going to move these into evidence  
3 and I'm going to show you Government's Exhibit 845.

4 COURTROOM DEPUTY: Bear with me one second, we had a  
5 glitch here. I think the system automatically went off and  
6 now it's powering on again. Just bear with me one second.

7 MS. NESTOR: I can move on briefly and then move on  
8 to this so we don't waist time.

9 Approaching the witness, with the Court's  
10 permission, to show 803-1?

11 COURTROOM DEPUTY: Ms. Nestor, I believe the system  
12 is back up.

13 MS. NESTOR: Excellent.

14 THE COURT: It is not in the binder?

15 MS. NESTOR: It is not in the binder, your Honor.

16 BY MS. NESTOR: :

17 Q I'm going to show you what is already in evidence as  
18 Government's Exhibit 845, and publish it to the jury. Is this  
19 one of the press releases that you pulled?

20 A Yes.

21 Q What company is it for?

22 A Dendreon.

23 Q An uploaded press release for Dendreon?

24 A Yes.

25 Q What is the ticker there?

VOIR DIRE - HAAPAOJA - MR. HEALY

1 A DNDN.

2 Q What is the date of the press release?

3 A August 3rd, 2011.

4 Q The second quarter 2011 financial results?

5 A Yes.

6 Q Showing you Government's Exhibit 846. Is this a press  
7 release for Metals USA?

8 A Yes.

9 Q On October 20, 2011?

10 A Yes.

11 Q Again, is this an uploaded press release?

12 A Yes.

13 Q Is the ticker MUSA?

14 A Yes, it is.

15 Q Were the other ones for Landstar in October 2011?

16 A Yes.

17 Q CA Technologies in 2012?

18 A Yes.

19 Q Caterpillar in 2012?

20 A Yes.

21 Q And Legg Mason in 2012 as well?

22 A Yes.

23 Q I'm showing you what is marked for identification only.

24 COURTROOM DEPUTY: For identification only.

25 Q It's also in front of you, Government's Exhibit 803-1?

VOIR DIRE - HAAPAOJA - MR. HEALY

1 COURTROOM DEPUTY: 803-1?

2 MS. NESTOR: Yes.

3 Q Do you recognize that?

4 A Yes.

5 Q What is it?

6 A It's a synopsis of some of the data around the six  
7 releases we just went through. So it's what we talked about  
8 before, order number, time in, company time out.

9 Q Is it pulled directly from Government's Exhibit 803?

10 A Yes.

11 Q Just for the press releases that you pulled that you were  
12 requested to do so by the Government; is that right?

13 A That's correct.

14 Q Did you review this spreadsheet for accuracy?

15 A Yes.

16 MS. NESTOR: At this time, your Honor, the  
17 Government moved to admit into the evidence 803-1?

18 THE COURT: It's already part of the 803.

19 MS. NESTOR: That's correct.

20 THE COURT: Any objection?

21 MR. HEALY: No objection.

22 THE COURT: Received.

23 (Government Exhibit 803-1, was received in  
24 evidence.)

25 MS. NESTOR: May I publish?

VOIR DIRE - HAAPAOJA - MR. HEALY

1 THE COURT: You may.

2 Q Zooming in on the headers, what is order ID?

3 A That's the unique order number that the system assigns to  
4 a release when it first comes in.

5 Q What is the external ID?

6 A That's an order -- a number that comes off of the OMC,  
7 our online customer portal. So they upload releases that way.

8 Q What is enquiry end date.

9 A The time and date that PR Newswire received the release  
10 from customer.

11 Q Customer name is just the customer providing the press  
12 release?

13 A Yes.

14 Q What is dissemination date?

15 A The date we released it, distributing it to the market,  
16 and our distribution network.

17 Q Is that the time?

18 A Yes.

19 Q By the way, what is the, in this example, what is the  
20 .080?

21 A That gets to milliseconds of time.

22 Q Is this the headline for the press release?

23 A Yes.

24 Q And what is the ticker indication there, let's keep it to  
25 this Dendreon Corporation, what is the ticker indication

VOIR DIRE - HAAPAOJA - MR. HEALY

1 there?

2 A You mean what is it?

3 Q What does it mean?

4 A It's the trading, the ticker symbol for that company on  
5 the NASDAQ stock market exchange.

6 Q So you know the ticker symbol so you know which exchange  
7 that it is traded on?

8 A Yes.

9 Q What is the topic opted?

10 A They are topics that we put in the metadata of the press  
11 release to allow receiving systems to sort by things earnings  
12 releases go here, conference calls go here, dividends go here,  
13 that kind of thing.

14 Q Did those cover all the press releases that you were  
15 asked to look for that were uploaded to PR Newswire?

16 A Yes.

17 Q The six you referred to earlier?

18 A Correct.

19 Q Did there come a time you learned that PR Newswire  
20 computer systems had been compromised?

21 A Yes.

22 Q When did you initially learn about the compromise?

23 A 2005.

24 Q 2005?

25 A Not 2005, 2015.



VOIR DIRE - HAAPAOJA - MR. HEALY

1 Q How did you come to learn that information?

2 A Through internal discussions at the company.

3 Q When you learned of the compromise, what was your  
4 understanding regarding whether it was a past event or current  
5 event?

6 A Past event.

7 Q Did you learn of the Indictment in this case at any  
8 point?

9 A Yes, when it was announced to the public, I think it was  
10 by the U.S. Attorney General.

11 Q Was that event significant to you in your role?

12 A Extremely significant.

13 Q Why?

14 A Because customers started calling my team almost  
15 immediately after that news conference asking what this was  
16 about, how this happened, does this mean that the information  
17 isn't secure, were their press releases compromised and a  
18 whole host of other things.

19 Q Was it significant to your company?

20 A To PR Newswire, significant, yes.

21 Q Can you briefly explain why that is?

22 A It's like what I said before, it went to the heart of one  
23 of the things that we do, which is to maintain confidentiality  
24 around the content of press releases from our customers. And  
25 they were, our customers were extremely concerned that we had

HAAPAOJA - CROSS - MR. HEALY

1 violated in that confidentiality.

2 MS. NESTOR: Thank you. No further questions.

3 THE COURT: Cross-examine.

4 MR. HEALY: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. HEALY:

7 Q Good morning, Mr. Haapaoja.

8 A Good morning.

9 Q Retirement treating you well so far?

10 A Not right now.

11 Q I'll try not to make it worse.

12 A Okay, I'm just kidding.

13 Q I want to talk to you a little about the marketplace you  
14 were discussing with the prosecution a few moments ago. Is it  
15 correct that in 2015 PR Newswire was acquired or sold to  
16 Cision?

17 A I think it was 2016.

18 Q Okay, 2016. Prior to that it was its own company,  
19 correct?

20 A Prior to that we were owned by UBM, a company based in  
21 the UK.

22 Q Is it fair to say that PR Newswire's primary source of  
23 revenue is through the process you described issuing press  
24 releases?

25 A Yes.

HAAPAOJA - CROSS - MR. HEALY

1 Q In 2013, in fact, gross revenues from that endeavor was  
2 \$310 million?

3 A It could be, sure, I don't remember.

4 Q Is it fair to say in that same year, 2013, PR Newswire  
5 expressed that they had distributed in that year 350,000 press  
6 releases?

7 A That could be correct.

8 Q You mentioned that there were, you mentioned three other  
9 companies with which PR Newswire competed for business,  
10 correct?

11 A At least, sure.

12 Q The competition was pretty fierce, would you agree with  
13 that?

14 A Yes.

15 Q And you talked about the two things that -- by the way,  
16 you are not a machine guy, you're not a technical guy, you  
17 were a people guy, correct?

18 A Yes.

19 Q And when you would talk to customers you would represent  
20 the understanding that PR Newswire was committed to two  
21 things, keeping the information confidential and meeting their  
22 particular needs; is that fair to say?

23 A Yes

24 Q That's why you were, or the sales force, was encouraging  
25 them to use PR Newswire rather than one of those other

HAAPAOJA - CROSS - MR. HEALY

1 competitors?

2 A Among other things, sure.

3 Q In terms of keeping the information confidential, one of  
4 the ways of course that would be accomplished was by  
5 maintaining appropriate security for their data, correct?

6 A You mean technical security?

7 Q Sure.

8 A Yes.

9 Q That would mean that you were trusting, or you as a  
10 people, person were trusting the people on the mechanical or  
11 the technical side to make sure that they were providing that  
12 technical security?

13 A Yes.

14 Q That they were making sure the systems were up-to-date?

15 A Yes.

16 Q Doing appropriate routine monitoring of those systems?

17 A Yes.

18 Q And that's because that's what you were telling the  
19 clients, correct, that we are keeping your information  
20 confidential?

21 A Well, that's what I was telling customers, yes.

22 Q Now, you talked about the process, and if I misstate  
23 something let me know, I think you said prior to being the  
24 vice president of customer experience, I think that was your  
25 final title?

HAAPAOJA - CROSS - MR. HEALY

1 A Yes.

2 Q You were head of a team that managed the press releases  
3 from upload through distribution, is that a fair  
4 characterization?

5 A Yes.

6 Q I think you said over 300 people on your team?

7 A Yes.

8 Q But those 300 people weren't the only team, correct?

9 A No, they were not.

10 Q There were 350,000-plus press releases, how many teams  
11 were there let's say in 2012?

12 A I'm not sure I understand the question. How many teams  
13 were there?

14 Q How many teams were there doing what your team was doing?

15 A Within PR Newswire?

16 Q Yes, sir.

17 A None.

18 Q None?

19 A My team was the team that processed press releases  
20 globally for PR Newswire.

21 Q So all the press releases that came into and then out of  
22 PR Newswire was processed by your team of 300?

23 A Yes, give or take, yes.

24 Q Was it an around-the-clock process?

25 A Yes.

HAAPAOJA - CROSS - MR. HEALY

1 Q So if IBM uploaded a press release at two in the morning,  
2 which would be after the close of business, correct, close of  
3 trading?

4 A Yes.

5 Q Someone would be available to review that prior to its  
6 distribution, if that distribution was to be 9:00 o'clock the  
7 next morning?

8 A Yes.

9 Q You talked about the methods by which press releases  
10 could be received, correct?

11 A Yes.

12 Q One of which you said was e-mail?

13 A Correct.

14 Q The other was the direct upload through the customer  
15 portal?

16 A Yes.

17 Q Were businesses assigned a method, did they choose a  
18 method, or something else, or could they do either?

19 A They could do either, typically they use one or the  
20 other.

21 Q And you mentioned that when things were uploaded to the  
22 portal they were given a time stamp; is that correct?

23 A When things were uploaded either through e-mail or the  
24 portal they were given a time stamp.

25 (Continued on next page.)

HAAPAOJA - CROSS - HEALY

1 MR. HEALY:

2 (Continuing.)

3 Q I wrote down. You said they would be in the queue. What  
4 did you mean by that?

5 A Correct. Whether it's through the portal or whether it's  
6 through e-mail, once they're uploaded they come into this  
7 system that we use for processing. And in that system,  
8 there's a queue that comes in where -- well, there's a queue  
9 with incoming orders that is then -- it's monitored all the  
10 time -- and so, that's where the press releases arrived.

11 Q And they're stamped as they exit the queue?

12 A No, they're stamped as they come in.

13 Q As they come in.

14 While they're on the queue, are they on the server  
15 to your knowledge?

16 A Yes.

17 Q Now, you talked about the availability of the press  
18 releases to the clients once they're uploaded, and you said  
19 that generally the clients do have access to those press  
20 releases; is that correct?

21 A No, I didn't say that.

22 Q Let me rephrase it. You said that they have access to  
23 them for cosmetic changes?

24 A No.

25 Q Please explain.

HAAPAOJA - CROSS - HEALY

1 A No. I said that, I believe, the question was more around  
2 our changes made and I said, yes, they're typically cosmetic  
3 changes. But those are being made by team.

4 Q So is it your testimony that once it comes into your  
5 system, the client is unable to make any changes to those  
6 press releases?

7 A I'm hesitating because we have a press release review  
8 function that is on the portal. So my team can -- I want to  
9 say republish, but that's the wrong word. They can put the  
10 document back on to the customer portal. The customer can  
11 then log in with their credentials and review the content on  
12 the portal.

13 They cannot make changes to the document on that  
14 portal. They need to talk to us before we do that, before any  
15 changes are made. So there's not an edit function on that  
16 portal.

17 Q I understand. I guess my question is a little more  
18 general.

19 You said they would have to talk to you or someone  
20 on the team before they could make changes. That implies  
21 they -- if it was necessary, changes could be made?

22 A Correct. By my team, yes.

23 Q That would be after a phone call was made. A personal  
24 contact was made with someone from your team?

25 A That's correct.



HAAPAOJA - CROSS - HEALY

1 Q Is there a record kept of those phone calls?

2 A Of the phone call itself or the interaction and what  
3 happened?

4 Q The phone call.

5 A Well, if the customer called in to us then, yes. If the  
6 customer -- if we called the customer then, no.

7 Q Now, you talked about the nature of press releases and  
8 you talked a lot about financial press releases. I think you  
9 also indicated that of the 300,000-plus press releases in any  
10 given year, there are all sorts of press releases; is that  
11 correct?

12 A Yes, that's correct.

13 Q For example, "Omni Hotels and Resorts Named Top Luxury  
14 Hotel Brand by Harris Poll."

15 That would be an example of a press release that  
16 might be on your system?

17 A Yes.

18 Q "Rand Imperial Restaurant Launches Express Dim Sum  
19 Lunch."

20 Could that be your system?

21 A Yes.

22 Q "Dumbest Insurance Fraud Case of All Time."

23 Would that be on your system?

24 A Maybe.

25 Q In fact, would it surprise you to know that every single

HAAPAOJA - CROSS - HEALY

1 one of those were distributed by PR Newswire in March of 2011?

2 A No.

3 Q Those press releases were given the same security and  
4 same customer service as IBM making an earnings announcement;  
5 correct?

6 A Yes.

7 Q Because that was paramount to what was being represented  
8 to those clients?

9 A Yes.

10 Q Now, you mentioned that you became aware in 2015 that PR  
11 Newswire had been compromised in the past?

12 A Yes.

13 Q Were you told that by the general counsel of PR Newswire?

14 MS. NESTOR: Objection.

15 THE COURT: Overruled. Go ahead.

16 A Yes.

17 Q And when he told you that, are you aware -- and if you  
18 are, you are.

19 Were you aware that was during the period of time  
20 that sill doesn't was going to take over or acquire PR  
21 Newswire?

22 A That's a difficult question for me to answer. My  
23 conversation with her was I'm not sure where we were in the  
24 process, but my best recollection is yes.

25 Q And would you agree with me that that information would

HAAPAOJA - CROSS - HEALY

1 have been relevant to sill doesn't?

2 A I suppose so.

3 Q Now, when you spoke with the general counsel, were you  
4 informed that, in fact, the intrusion had been discovered in  
5 2012, three years earlier?

6 MS. NESTOR: Objection, your Honor.

7 THE COURT: Sustained.

8 Q Did you come to learn when the intrusion into PR Newswire  
9 first occurred?

10 A I believe that the -- what you're asking me became clear  
11 to me with the announcement with the attorney general. I  
12 think that was in August of 2015.

13 Q So it's fair to say that in 2012 you were never told?

14 A That's correct.

15 Q You were also never told in 2012 that PR Newswire had  
16 engaged a forensic investigation firm to look into this?

17 A I wasn't, no.

18 Q And you were never told that in 2012 members of that team  
19 met with the Department of Justice that was conducting an  
20 investigation?

21 A I was not.

22 Q Do you think that that information was something that  
23 would have been of interest to the clients that you were  
24 dealing with back in 2012?

25 A I guess the short answer is yes, but -- yeah, sure.

HAAPAOJA - CROSS - HEALY

1 Q Because that affected the confidentiality of their  
2 information; correct?

3 A I guess so, sure.

4 Q And if they knew, they could take steps to protect their  
5 information?

6 A Yeah. Yeah.

7 Q They could change their upload times, for example?

8 A Yeah, sure.

9 Q They could choose a different firm?

10 A They could.

11 Q That wouldn't have been good for business, though?

12 A I would suspect not if PR Newswire was the only one that  
13 was saying that.

14 Q And is it fair to say that also you were not told that an  
15 intrusion happened again in 2013?

16 A No.

17 Q And would the same relevance to the clients have existed  
18 in 2013?

19 A I guess so, sure.

20 Q They would have been just as interested at that point;  
21 correct?

22 A Yes.

23 MS. NESTOR: Objection, your Honor.

24 THE COURT: The line of questioning has been pursued  
25 enough.

HAAPAOJA - CROSS - HEALY

1 MR. HEALY: Sure, your Honor.

2 Q I would like to talk to you a little bit about the press  
3 releases that you discussed earlier that are in your binder.

4 A Yes.

5 Q Now, is it fair to say that each of the companies  
6 represented in that binder were repeat clients of PR Newswire?

7 A I'm not positive of that.

8 Q Okay. Let's take one in particular. Let's talk about  
9 CA Technologies.

10 A Yes.

11 Q Would you agree with me that CA Technologies is a  
12 computer software firm?

13 A Yes.

14 Q And you know that because part of your job was to get to  
15 know the clients; right?

16 A Yes.

17 Q And would you agree with me that in the time period we're  
18 talking about, CA Technologies, the time period being 2011 to  
19 2015, did CA Technologies issue many, many, many press  
20 releases?

21 A Yes.

22 Q Now, could you tell us the date on that press release?

23 A The one that -- yeah, it's October 21, 2011.

24 Q And that is an earnings press release?

25 A That's correct.

HAAPAOJA - CROSS - HEALY

1 Q Now, I think you testified during voir dire that that  
2 press release was given to you by the Government. You didn't  
3 pull that yourself first?

4 A No. No.

5 Q No, you did not pull it?

6 A Oh, yes. The copy of the press release was given to me  
7 by the Government for review, correct.

8 MR. HEALY: Now, if we could pull up, Ms. Mulqueen,  
9 I'm going to use the to HDMI at the podium and I'm going to be  
10 putting up one of the spreadsheets that's already in evidence  
11 which is 803 for the Government. And for the record, it's  
12 spreadsheet that is numbered 757.

13 COURTROOM DEPUTY: Okay.

14 Q Mr. Haapaoja, you said you reviewed these things and I  
15 certainly don't presume that you memorized them. There's  
16 literally hundreds of thousands of entries here.

17 This is one of the spreadsheets that you  
18 entered -- that you entered into evidence which concerns the  
19 period of 2011 into '12, and what I'd like to do is this.

20 Let's just, if we could, we're going to filter for  
21 CA Technologies.

22 And on this particular spreadsheet, which contains  
23 over 200,000 entries, you'll see that we have, when you look  
24 at the bottom corner, 57 different entries for  
25 CA Technologies.

HAAPAOJA - CROSS - HEALY

1 Now, if you look at the highlighted section, can you  
2 see the dates in Column E?

3 A Yes.

4 Q And would you agree with me that those dates exclusive of  
5 the, well, we'll do that. Are including dates from  
6 January 24th and January 30th of 2012?

7 A Yes.

8 Q And would you agree with me that in that short period of  
9 time there are seven, I believe, seven different press  
10 releases released by CA Technologies; is that correct?

11 THE COURT: I think your count is wrong.

12 THE WITNESS: Yeah. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

13 Q Now, again, I don't want to -- my mistake because I  
14 wasn't going to include -- let's say ten, okay.

15 Would you also agree with me that there were two  
16 that were issued on the same date, January 24, 2012?

17 A Yes.

18 Q One of which is contained in your binder; correct?

19 A Yes.

20 Q But you weren't given the other one?

21 A No.

22 Q And would you also agree with me that it actually wasn't  
23 at all unusual, your time at CA Technologies, for companies to  
24 issue more than one press release on any given day?

25 A Yes.

HAAPAOJA - CROSS - HEALY

1 Q Now, let's talk briefly about Caterpillar.

2 Can you open up to Caterpillar?

3 And what I'd like to do is I'm going to refilter now  
4 for Caterpillar and just visit a small quarter subsection.

5 Now, what is the date of the press release that you  
6 were given by the Government?

7 A January 25, 2012.

8 Q And that would represent -- the date on that would  
9 represent the date that it was uploaded; correct?

10 A Correct.

11 Q So the date that it was released, what does the  
12 information indicate on the press release?

13 A The following day, January 26, 2012.

14 Q And if we look at this bottom line here on the line  
15 that's included in Exhibit 803, that is the information  
16 regarding that press release; correct?

17 A That dissemination, right. That's correct.

18 Q Now, I'd like you to look at the top line, the top line  
19 is highlighted.

20 What's the date on that?

21 A For the dissemination is 1/12/2012.

22 Q And would you agree with me that the headline is telling  
23 the world, or as you said "everybody," when Caterpillar is  
24 going to announce their earnings.

25 Is that fair to say?



HAAPAOJA - CROSS - HEALY

1 A Yes.

2 Q So everybody who looked at the PR Newswire press release  
3 that your company issued on January 12th could mark their  
4 calendars and know that on January 26th Caterpillar was going  
5 to announce their earnings.

6 Is that fair to say?

7 A I don't know. I didn't be review this one.

8 Q Okay. But based on your review of the headline, would  
9 you agree with me?

10 A I would suppose so.

11 Q Okay. Now, I want you to look at the middle highlighted  
12 column that's not from Caterpillar. That's from a company  
13 called Zacks.

14 Are you familiar with Zacks?

15 A Yes.

16 Q Fair to say they were a client of PR Newswire?

17 A Yes.

18 Q Would it surprise you to know that in this particular  
19 spreadsheet, which incorporates only one year, that PR  
20 Newswire issued over 1,600 press releases for Zacks?

21 A I don't know.

22 Q Do you agree, though, that may be in keeping with what  
23 you know about Zacks as a client?

24 A Yes.

25 Q Do you know what Zacks is?

HAAPAOJA - CROSS - HEALY

1 A Yes.

2 Q And is it fair to say that Zacks is a financial analysis  
3 website?

4 A Yes.

5 Q They give detailed information about different stocks  
6 that are publicly traded?

7 A Yes.

8 Q And can you tell me the date that Zacks made a press  
9 release that I've highlighted on this?

10 A The dissemination date was January 24, 2012.

11 Q And January 24, 2012, is the day before the press release  
12 was uploaded from PR Newswire to Caterpillar?

13 A Two days before the 24th through the 26th.

14 Q I think you read to me that the upload date was the 25th?

15 A Sorry. I'm looking at the dissemination date.

16 Q Now, we don't have this press release. But can you read  
17 to the jury the headline?

18 A "Zacks Bull and Bear of the Day highlights Caterpillar,  
19 NII Holdings, Lowe's Companies, Home Depot, and St. Jude  
20 Medical."

21 Q So, again, anybody that was looking out for PR Newswire  
22 releases would have known to go to Zacks or to read that press  
23 release to get, among other things, information on  
24 Caterpillar?

25 A Yes.

HAAPAOJA - CROSS - MS. FELDER

1 MR. HEALY: One moment, your Honor. Pause.

2 (A brief pause in the proceedings was held.)

3 MR. HEALY: No further questions.

4 THE COURT: Ms. Felder.

5 CROSS-EXAMINATION

6 BY MS. FELDER:

7 Q Good morning.

8 A Hello.

9 Q You testified that Factiva is a website that's an  
10 amalgamation of various financial data; is that correct?

11 A I believe so, yes.

12 Q Have you ever worked at Factiva?

13 A No.

14 Q Did you review any of the press releases pulled from  
15 Factiva?

16 Did the Government show you any press releases they  
17 pulled from Factiva?

18 A I'm not sure.

19 Q But you don't have any personal knowledge about the  
20 document retention process for Factiva, do you?

21 A I have. I understand how we deliver content to websites  
22 and things, but exactly how that's done and what they do with  
23 it, no, I do not.

24 Q Okay. So your role is providing the information to  
25 Factiva?

HAAPAOJA - CROSS - MS. FELDER

1 A Correct.

2 Q Correct. And once it's given to Factiva, you don't know  
3 how it's stored; correct?

4 A No.

5 Q The Government showed you exhibits No. 845 through 850.

6 Those are press releases that were shown to you two  
7 weeks ago; correct?

8 A Correct.

9 Q And you testified that you didn't pull them yourself but  
10 other people did?

11 A Correct.

12 Q Did you review any drafts of those press releases?

13 A I don't know what you mean by drafts.

14 Q Drafts. Any --

15 For example, you testified that customers would  
16 upload documents to the portal and they would e-mail it;  
17 correct?

18 A Right.

19 Q And there's an editorial process where changes can be  
20 made to the documents?

21 A Correct.

22 Q And that your team would make those changes based on your  
23 conversations with the customers?

24 A Correct.

25 Q Were the press releases that were admitted into evidence,

HAAPAOJA - REDIRECT - MS. NESTOR

1 did you review any drafts of those documents or only the final  
2 documents shown by the Government?

3 A Not the final document, it was the original document that  
4 was sent in.

5 Q Okay. So that those documents they weren't edited, they  
6 were uploaded and distributed as uploaded?

7 MS. NESTOR: Objection, your Honor.

8 THE COURT: I'm sorry. Sustained as to form. Break  
9 it down, please.

10 Q The documents you reviewed were the uploaded documents;  
11 correct?

12 A That's right.

13 Q Are you aware of any other versions of those documents?

14 A I'm not sure how to answer this, but I'll say yes.

15 Q There are other versions of those press releases?

16 A There are other versions of some of the press releases.

17 MS. FELDER: No further questions. Thank you.

18 THE COURT: Anything else?

19 MS. NESTOR: I want to clarify that last point.

20 THE COURT: Just questions.

21 REDIRECT EXAMINATION

22 BY MS. NESTOR:

23 Q You said that there were other versions of the press  
24 releases after the uploaded press release that we reviewed in  
25 court today?

HAAPAOJA - RECROSS - MS. FELDER

1 A That's correct.

2 Q Can you explain what you meant?

3 A Yes. So for those six press releases, three of them had  
4 no changes at all. They were sent -- other than the  
5 reformatting, they were sent exactly the same as they were  
6 uploaded to us?

7 Q What about the other three?

8 A The other three. One had an additional, one had a link  
9 that was added to the press release. One had a formatting  
10 change to the column, as I said before, they get misaligned  
11 some. And then the other one had punctuation. Not exactly  
12 sure which was which. But I testified before that we  
13 primarily make cosmetic changes and that's three instances of  
14 what I meant by that.

15 MS. NESTOR: No further questions.

16 THE COURT: Anything else.

17 MS. FELDER: May I inquire your Honor?

18 THE COURT: Yes, ma'am.

19 RECROSS-EXAMINATION

20 BY MS. FELDER:

21 Q Is it your testimony that once a press release is  
22 uploaded, the customers can review those press releases;  
23 correct?

24 A Yes.

25 Q There may be changes in those press releases; correct?

HAAPAOJA - RECROSS - MS. FELDER

1 A Yes.

2 Q Mainly cosmetic as you testified?

3 A Correct.

4 Q Have there been times when other things have been made?

5 A Yes.

6 MS. FELDER: Thank you.

7 THE COURT: Anybody? Anything else? Going once.

8 Back to retirement, sir. Thank you very much.

9 THE WITNESS: Thank you.

10 (Witness leaves the witness stand.)

11 THE COURT: Any witness, please.

12 MR. TUCKER: Your Honor, the Government calls Robert  
13 Soares.

14 (Witness takes the witness stand.)

15 COURTROOM DEPUTY: Sir raise your right hand.

16 (Witness takes the witness stand.)

17 ROBERT DE MACEDO SOARES, called as a witness, having been  
18 first duly sworn/affirmed, was examined and testified as  
19 follows:

20 THE WITNESS: I do.

21 COURTROOM DEPUTY: Thank you. Please have a seat.  
22 State your full name for the record.

23 THE WITNESS: Robert DeMacedo Soares. R-o-b-e-r-t.  
24 D-E M-A-C-E-D-O S-O-A-R-E-S.

25 MR. TUCKER: May I inquire?

SOARES - DIRECT - MR. TUCKER

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. TUCKER:

4 Q Good morning, sir, where do you work?

5 A Business Wire.

6 Q What is Business Wire?

7 A A press release distributor.

8 Q Where is Business Wire based?

9 A San Francisco and New York are the two primary offices.

10 Q Where do you work?

11 A San Francisco.

12 Q How long have you worked at Business Wire?

13 A Since the end of 2011.

14 Q What's your current title in Business Wire?

15 A Chief technology officer.

16 Q What are your responsibilities as chief technology  
17 officer of Business Wire?

18 A I'm responsible for our systems, networks, software  
19 development, internal and external customer support.

20 Q Do you have a staff that reports to you?

21 A Yes, I do.

22 Q Approximately how large is that staff?

23 A Roughly 100.

24 Q Does your portfolio of responsibilities include, among  
25 other things, network and information security?



SOARES - DIRECT - MR. TUCKER

1 A Yes.

2 Q Please tell the jury a little bit about your professional  
3 background and how you became CTO of Business Wire?

4 A Sure. I started in the industry in 2007. I joined  
5 Business Wire in 2011 as a senior systems administrator. I  
6 became an applications security engineer. Managed a systems  
7 engineering team. Became a vice president of systems  
8 engineering and then a chief technology officer.

9 Q How did Business Wire customers provide press releases to  
10 Business Wire for distribution?

11 A They log in through an online order entry system and  
12 submit their press release along with any instructions for  
13 distribution.

14 Q When you say "log in," does that mean that the customers  
15 have to provide a user name and a password?

16 A Correct.

17 Q And once they log in, what types of instructions about  
18 distribution do Business Wire customers provide?

19 A The time of release. For example, you could also have a  
20 geographic distribution, say, North America or an industry.

21 Q So just focus in on the distribution instructions.

22 When you say, "A geographic distribution," can you  
23 explain a little bit more what you mean by that?

24 A Sure. There are different media outlets across the  
25 globe, and a customer can select what area they would like to

SOARES - DIRECT - MR. TUCKER

1 target.

2 Q Like you said earlier, North America, for instance.

3 A Correct.

4 Q And could Business Wire customers also choose to have  
5 their press releases distributed to particular types of media  
6 publications and outlets?

7 A Yes.

8 Q So if it's a technology company, they could choose  
9 technology media outlets?

10 A Correct.

11 Q And then you said that the press release itself is  
12 uploaded?

13 A Yes.

14 Q Do Business Wire users have the ability to upload other  
15 content beside the press release itself?

16 A Maybe.

17 Q Provide us with an example of other content.

18 A Media such as images.

19 Q Pictures?

20 A Right.

21 Q Once the media and associated press release are uploaded  
22 by the Business Wire customer, where is that data stored?

23 A In a database internally at Business Wire.

24 Q Where is that database physically located?

25 A Our primary data center is in Sacramento, California.

SOARES - DIRECT - MR. TUCKER

1 Q After the press release and any associated media are  
2 uploaded to Business Wire's database, what's the next step in  
3 the process?

4 A Our editorial staff will take that release and perform  
5 their duties.

6 Q What are their duties? What does the editorial staff do?

7 A For example, checking for grammar, formatting, and  
8 preparing it for distribution.

9 Q When the appointed time for distribution comes around,  
10 what happens? How are press releases distributed by  
11 Business Wire?

12 A Our primary distribution mechanism is a patented system  
13 called NX whereby we send an encrypted press release shortly  
14 before the release time and then send a decryption key to  
15 decrypt that release at the appropriate time.

16 Q So just to break that down a little bit.

17 You said it was a patented distribution system  
18 called NX?

19 A Correct.

20 Q And the way that that works is an encrypted final press  
21 release is distributed to those media publications?

22 A Correct.

23 Q Can you explain?

24 THE COURT: Why don't you let me interrupt you for a  
25 second.

SOARES - DIRECT - MR. TUCKER

1           Why don't you just tell us what you mean by the word  
2 "encrypted" in this context.

3           THE WITNESS: Sure.

4           It's essentially when you turn a file that would be  
5 legible into something that's not computer or even readable.

6 Q       So how -- once the appointed time of distribution comes  
7 around, what does Business Wire do to render those encrypted  
8 files readable?

9 A       We send a decryption key which will unlock, so to speak,  
10 that content.

11 Q       About how long before the distribution time is the  
12 encrypted or locked file distributed by Business Wire?

13 A       Within a half an hour of time of release.

14 Q       And then the actual time of release that's when that  
15 decryption key is sent out?

16 A       Correct.

17 Q       Is it important to Business Wire to keep its customers'  
18 press releases confidential before their scheduled  
19 distribution time?

20 A       Yes.

21 Q       Why?

22 A       Our clients are largely public companies which may send  
23 market-moving information through it.

24 Q       When you say "market-moving information," what market are  
25 you referring it?

SOARES - DIRECT - MR. TUCKER

1 A The stock market.

2 Q What do you mean by "market moving"?

3 A For example, financial information.

4 Q And how would that move the markets? What do you mean by  
5 moving markets?

6 A Unexpectedly poor or good financial performance, for  
7 example.

8 Q What affect might that have on, say, the stock price?

9 A It could raise or lower.

10 MR. BRILL: Objection, your Honor.

11 THE COURT: Did I hear an objection.

12 MR. BRILL: Yes.

13 THE COURT: What effect would that have?

14 MR. BRILL: To the foundation for this witness  
15 answering the question, yes, your Honor.

16 THE COURT: Overruled.

17 Q The question again was, what affect might that have on  
18 the stock price.

19 What do you mean by market-moving information?

20 A It could move the stock price up or down, for example.

21 Q Did there come a time in 2015 when you learned that  
22 Business Wire's computer systems had been the target of  
23 malicious cyber activity?

24 A Yes.

25 Q Please tell the jury what happened?

SOARES - DIRECT - MR. TUCKER

1 A On May 19th, we became aware through an internal  
2 cybersecurity employee that a piece of malware had been down  
3 loaded to a Business Wire system.

4 Q So a few questions.

5 That was May 19, 2015?

6 A Correct.

7 Q And you say that you to let this from an internal  
8 cybersecurity employee at Business Wire?

9 A Correct.

10 Q What was your role at that time in May of 2015?

11 A I was a manager of systems engineering.

12 Q So you were working essentially in information technology  
13 at Business Wire?

14 A Yes.

15 Q And you said that the internal cybersecurity employee had  
16 become of aware of the malware on a Business Wire system?

17 A Correct.

18 Q What's malware just generally?

19 A Generally, it's computer software intended to harm or  
20 otherwise abuse the network you could say.

21 Q I couldn't quite hear what you said.

22 A Or abuse the network. You know abuse privileges, that  
23 sort of thing.

24 Q What was the particular system that this malware was  
25 found on at Business Wire?

SOARES - DIRECT - MR. TUCKER

1 A A Business Wire employee.

2 Q Was it a workstation, a desktop computer?

3 A Correct.

4 Q What was your role in the response to this discovery of  
5 malware?

6 A I worked with our internal team and also the  
7 cybersecurity firm we brought in to assist.

8 Q Did you have occasion to personally discuss and examine  
9 the malware that was found on this employee's workstation?

10 A I was involved in the investigation which included being  
11 briefed on the malware found, yes.

12 Q All right. So focusing on the malware for a moment.

13 What was the malware?

14 A This was Mimikatz.

15 Q M-i-m-i-k-a-t-z. Something like that?

16 A That sounds correct.

17 Q What is a Mimikatz?

18 A It's a password retrieval tool.

19 Q That doesn't necessarily sound bad. How is a password  
20 retrieval tool possibly malware?

21 A For example, if an unintended recipient has that on your  
22 system, they could retrieve a user's password information.

23 Q So it would be a way to potentially steal log-in  
24 credentials?

25 A Correct.

SOARES - DIRECT - MR. TUCKER

1 Q Besides the discovery of the Mimikatz malware on that  
2 employee's computer, did you and the team discover any other  
3 indications of malicious activity targeting Business Wire?

4 A Yes.

5 Q Please tell the jury.

6 A We also saw what is known as collateral movement across  
7 the network. So the computers infecting other computers and  
8 observe network traffic which will bolster that theory.

9 Q Did you see something called "beaconing" to outside  
10 systems?

11 A Correct, yes.

12 Q B-e-a-c-o-n-i-n-g. What's beaconing?

13 A That's when an infected system will try to communicate  
14 with what are known as command and control systems.

15 Q What's a command and control system?

16 A It's a system where, essentially, you get instructions  
17 from an outside party.

18 Q And you were able to determine that those systems that  
19 Business Wire computers were beaconing to were not authorized  
20 external systems?

21 A Correct.

22 Q Those discoveries were made by you and the internal  
23 Business Wire team; is that right?

24 A That is my recollection, yes.

25 Q What did Business Wire and the team do in response to



SOARES - DIRECT - MR. TUCKER

1 these discoveries?

2 A Immediately took remediation steps by pulling those  
3 machines off of the network and then also engaged a leading  
4 cybersecurity firm to assist in the investigation.

5 Q So you had said remediation steps by taking those systems  
6 off the network. Can you explain to the jury why that's a  
7 remediation step?

8 A Sure. As we were discussing, the lateral movement can  
9 only happen if infected machinery remains on the network to  
10 try to infect further machines. So if you pull that machine  
11 off the network, it can no longer infect the machine on the  
12 network.

13 Q You also said you also engaged a leading cybersecurity  
14 firm?

15 A Yes.

16 Q That is Fidelis?

17 A Yes.

18 Q Did Fidelis comes and respond, an incident response to  
19 Business Wire?

20 A Yes.

21 Q Did you participate in that response by Fidelis?

22 A I did.

23 Q What was your role?

24 A I worked with them and provided, for example,  
25 credentials, network access, and anything else that was needed

SOARES - DIRECT - MR. TUCKER

1 as well as the daily logs and assisting with the  
2 investigation.

3 Q So, again, focusing on that initial malware that was  
4 discovered on the employee's computer, is that indicative of  
5 any particular vector of attack or means by which the attacker  
6 initially targeted Business Wire systems?

7 A Generally speaking, when malware is discovered on a  
8 user's machine it can be either through browser activity or  
9 e-mail.

10 Q So just so it's clear when you say, "Browser activity,"  
11 what do you mean?

12 A Visiting an infected website, for example.

13 Q What about e-mail? What do you mean by e-mail as a way  
14 to get e-mail onto the system?

15 A A phishing attack.

16 Q So that's p-h-i-s-h-i-n-g?

17 A Yes.

18 Q What's phishing?

19 A Phishing is when you send a targeted e-mail to a user  
20 with the idea and intent of getting them to either provide  
21 information back to you that you can use against, you know, in  
22 furtherance of your goals, or alternatively, to actively  
23 detonate a malicious payload.

24 Q What is a malicious payload?

25 A A virus.

SOARES - DIRECT - MR. TUCKER

1 THE COURT: Can we find a logical point to take a  
2 morning break?

3 MR. TUCKER: We can do it right now.

4 THE COURT: We can do that.

5 Don't discuss the case, folks. We'll resume in  
6 about 12 minutes.

7 COURTROOM DEPUTY: All rise.

8 (Jury exits courtroom.)

9 THE COURT: Somebody signaled to Ms. Mulqueen we  
10 needed a break so I have a break.

11 MR. TUCKER: Mr. Soares, you can use the bathroom if  
12 you like. Just stay very close.

13 (Witness leaves the witness stand.)

14 (A recess in the proceedings was taken.)

15 (Continued on the next page.)

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SOARES - DIRECT - MR. TUCKER

THE COURTROOM DEPUTY: All rise.

(Jury enters the courtroom.)

(Jury present.)

THE COURT: All right. Please be seated everyone.

MR. TUCKER: May I proceed, Your Honor?

THE COURT: Go ahead, Mr. Tucker.

MR. TUCKER: Thank you, Your Honor.

DIRECT EXAMINATION (CONTINUED)

BY MR. TUCKER:

Q Before we broke, Mr. Soares, you were talking about the investigation at Business Wire by followed that discovery of Malware on the employees' computer in May of 2015; is that right?

A Correct.

Q Did the investigation reveal other indications of when Business Wire systems had been the target of malicious cyber activity?

A Yes.

Q What were those time periods?

A There were five periods: From September to October of 2014, November of 2014, January of 2015, April 2015, and May 2015.

Q Did you see indications that compromised user credentials, specifically Business Wire user credentials, were being used by the attackers?

SOARES - DIRECT - MR. TUCKER

1 A Yes.

2 Q What did you see?

3 A We observed evidence of user activity either to systems  
4 where the user did not normally have access or would not  
5 normally have access in the course of daily work or at periods  
6 of the day when they were not on shift or scheduled to be  
7 working.

8 Q So it's clear these were Business Wire employees' user  
9 credentials?

10 A Correct.

11 Q Did the investigation yield any evidence about the origin  
12 of the attack?

13 A The attack appeared to originate from Eastern Europe.

14 Q And what is that based on?

15 A That was based on the domain that the systems were trying  
16 to beacon out to.

17 Q Just so it's clear, those are the external systems that  
18 Business Wire's compromised computers were trying to  
19 communicate with?

20 A Correct.

21 Q And those go back to Eastern Europe based on IT  
22 addresses?

23 A Most of them had a POB or, you know, like .com or dot --  
24 you, know, any other country's POB, .us, for instance. But in  
25 this case it was largely Eastern Europe.

SOARES - DIRECT - MR. TUCKER

1 Q So it's clear those suffixes for those domains that you  
2 saw, some of them resolve back to European countries?

3 A Most of them, as I recall.

4 Q Now, at that time, did the investigation yield any  
5 evidence that information had been successfully stolen from  
6 Business Wire's system?

7 A No.

8 Q Please explain what you saw.

9 A We saw that there had been, you know, malicious activity  
10 on our systems but not directly observe any data leaving our  
11 systems, like client confidential data, for example.

12 Q Now, did there come a time when you were presented with  
13 some evidence that data had been, in fact, stolen from  
14 Business Wire's system?

15 A Yes.

16 Q Please tell the jury what happened.

17 A The Department of Justice provided that data.

18 Q What was that data, generally speaking?

19 A Generally speaking, example of press releases in a  
20 prefinished state.

21 Q A prefinished state, is that what you said?

22 A Correct.

23 MR. TUCKER: I would like to show what is in  
24 evidence as Government's Exhibit 3169-A1?

25 THE COURTROOM DEPUTY: 3961-A1.

SOARES - DIRECT - MR. TUCKER

1 MR. TUCKER: 31 -- I may have misspoken. 3169-A1.

2 THE COURTROOM DEPUTY: Dash A1. Okay. And that's  
3 in evidence.

4 MR. TUCKER: Yes. Thank you, Ms. Mulqueen.

5 THE COURTROOM DEPUTY: Okay.

6 MR. TUCKER: I'm not seeing it on my screen. Are  
7 you --

8 THE COURTROOM DEPUTY: I'm sorry, Mr. Tucker.  
9 You're using the docket camera.

10 MR. TUCKER: For right now, yes.

11 THE COURTROOM DEPUTY: Okay.

12 MR. TUCKER: Sorry about that.

13 THE COURTROOM DEPUTY: Okay. We had our signals  
14 crossed.

15 BY MR. TUCKER:

16 Q All right. So showing what is in evidence now as  
17 3169-A1, is this one of those prefinished pre releases that  
18 you just described?

19 A Yes.

20 Q Now, what is the significance of this information here at  
21 the top making reference to, amongst other things,  
22 newsm1.businesswire.com?

23 A So that is largely the title information and metadata.

24 Q What's metadata?

25 A Any sort of data that a company can file to give more

SOARES - DIRECT - MR. TUCKER

1 information about it.

2 Q So this is metadata that is populated by Business Wire's  
3 systems?

4 A Correct. It's metadata that is specified by our systems.

5 Q And what's newsml specifically?

6 A It's an industry-specific type of ML.

7 Q Is that similar to HTML, the language you associated with  
8 web pages?

9 A It is similar, yes.

10 Q Can you just explain a little bit about how it works and  
11 how it's different from HTML?

12 A Sure. They're structured languages in a similar fashion,  
13 but they have different tasks, basically different commands  
14 within the document format.

15 Q Is there anything distinctive about this header that  
16 gives you some information about where in that editorial  
17 process between the initial submission and distribution this  
18 particular draft press release itself?

19 A Yes.

20 Q Please tell the jury.

21 A In a finished press release that is ready for  
22 transmission, the first line of that header has three IDs  
23 appended to it, which are missing in this example.

24 Q So those are numerical IDs?

25 A That's correct.



SOARES - DIRECT - MR. TUCKER

1 Q I'm going to show what's in evidence as 3080-A1. I'm  
2 going to show that simultaneously with 3169-A1. This is  
3 another press release. The headline here is  
4 Synnex Corporation Reports Record First Quarter Revenue and  
5 Net Income for Fiscal 2015; is that right, Mr. Soares?

6 A Yes, right.

7 Q And do you see the numerical indicators in the header of  
8 Government's Exhibit 3080-A1 that were not present in  
9 Government's Exhibit 3169-A1?

10 A I do.

11 Q And these numbers here appearing at the top?

12 A That is correct.

13 Q So just so it's clear, the fact that these numbers are  
14 present in the header, does that necessarily mean this  
15 document is post-distribution?

16 A Not necessarily.

17 Q Please explain.

18 A That indicates that the document is ready for  
19 transmission but does not definitively determine whether it  
20 been transmitted yet.

21 Q All right. Well, once again on this other information,  
22 this would be metadata that you would associate with  
23 Business Wire's system tracking this particular press release  
24 and its formatted features?

25 A And the cyber information for one of the distributions,

SOARES - CROSS - MR. HEALY

1 yes.

2 Q And so just directing your attention back to 3169 with  
3 the headline, Veeva Announces Fiscal 2016 First Quarter  
4 Results, those numbers are absent there; is that right,  
5 Mr. Soares?

6 A Correct.

7 Q And what is the significance of that?

8 A That indicates that this press release was not yet ready  
9 for transmission.

10 Q So this is earlier in the editorial process?

11 A Correct.

12 MR. TUCKER: One moment Your Honor.

13 THE COURT: Yes, sir.

14 MR. TUCKER: No further questions, Your Honor.

15 THE COURT: All right. Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. HEALY:

18 Q Good morning, Mr. Soares.

19 A Good morning.

20 Q Just a few questions. In 2014 -- strike that.

21 In May of 2015, it was your internal team that had  
22 discovered there had been, I believe you used, Malware  
23 inserted onto one of the devices in your company?

24 A Correct.

25 Q Your team discovered that?

SOARES - CROSS - MR. HEALY

1 A That was not my team at the time.

2 Q All right. Business Wire's internal people discovered  
3 that?

4 A Correct.

5 Q No one had to call to you and tell you that your system  
6 had been compromised?

7 A Correct.

8 Q That's because your team routinely searched for that sort  
9 of thing, correct?

10 A The information security employees, yes.

11 Q And you are now head of that department, shall we say?

12 A That department reports up to me, yes.

13 Q So you are the head of that department.

14 Do you routinely still do that?

15 A That is known -- yes.

16 Q Do I have the day correct, your -- the Business Wire  
17 internal people discovered that on May 19th of 2015?

18 A Correct.

19 Q And isn't it true that the next day on May 20th, Fidelis,  
20 the security firm, was engaged?

21 A Correct.

22 Q Immediately?

23 A Yes.

24 Q You took immediate action?

25 A Yes.

SOARES - CROSS - MR. HEALY

1 Q And you told Mr. Tucker this was a well-respected firm,  
2 Fidelis; is that true?

3 A Correct.

4 Q Did you have other firms that you could have chosen?

5 A There are many firms in the cyber security sector.

6 Q Was it Business Wire's opinion that this was among the  
7 west?

8 A Yes.

9 Q Because it was important to maintain that security; is  
10 that true?

11 A Yes.

12 Q And when Fidelis was retained, they were given  
13 instructions to work with the Business Wire team to analyze  
14 what had happened?

15 A I did not provide them with their instructions, but that  
16 is --

17 Q Are you aware --

18 A -- my understanding --

19 Q -- if they were given instructions?

20 A -- yes.

21 Q I'm sorry to speak over you.

22 A I said that is my understanding, yes.

23 Q And was it your understanding that they were also given  
24 instructions to work with the Business Wire people to contain  
25 the situation?

SOARES - CROSS - MR. HEALY

1 A Yes.

2 Q And were they given instructions to monitor the  
3 situation?

4 A Yes.

5 Q And, in fact, is that what occurred?

6 A That is.

7 Q And isn't it true that Fidelis continued to monitor the  
8 situation after it had been contained?

9 A Yes.

10 Q And did, in fact, Fidelis produce an interim report in  
11 June discussing what had been found?

12 A That sounds correct, yes.

13 Q Do you remember reviewing an interim report at some  
14 point?

15 A Yes.

16 Q Do you recall if in that interim report they found that  
17 there were at least two individuals acting as a team that were  
18 trying to access the Business Wire service?

19 A I do not recall that specifically.

20 Q I'm going to show you what has been marked as  
21 Government's Exhibit 3500 RS-1?

22 MR. HEALY: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. HEALY:

25 Q I'm going to ask you to review certain pages of that

SOARES - CROSS - MR. HEALY

1 document.

2 A (Witness complies.)

3 Q Let's come back to that particular question in a moment.

4 As part of their interim report, did Fidelis  
5 determine at that time that there was no concrete evidence of  
6 any attacker activity after May 20th?

7 A My understanding of the report was that there was no  
8 evidence of data exfiltration at that time.

9 Q Well, I'm going to refer you just to Page 5 of 3500 RS1,  
10 the third paragraph from the bottom. Could you just look at  
11 that and see if that refreshes your recollection?

12 A Sure. Yes.

13 Q And having read that to refresh your recollection, do you  
14 agree with me that there was no concrete evidence of attacker  
15 activity according to the report after May 20th?

16 A It does refer to two systems that were discovered after  
17 that containment, that initial containment.

18 Q Sure. When you say, "discovered," they could have been  
19 there already?

20 A Correct.

21 Q And is it also true to say that in that interim report  
22 Fidelis could not conclude what, if any, data was taken by the  
23 hackers?

24 A Correct.

25 Q And, in fact, didn't Business Wire's internal team and

SOARES - CROSS - MR. HEALY

1 Fidelis continue to monitor their system after this?

2 A Correct.

3 Q And continued to try to make sure that the clients' data  
4 was secure?

5 A Correct.

6 Q And, in fact, was a final report issued, to your  
7 knowledge, by Fidelis in December of 2015?

8 A The date skips me, but that is my understanding.

9 Q And that report was focused mainly on the time between  
10 the interim report in June and the time that they produced  
11 their final report?

12 A That sounds correct.

13 Q And is it true that they discovered that there were no  
14 new intrusions between June 18th and October 15th?

15 A That is my recollection.

16 Q So to be clear, Business Wire's internal security team  
17 found no evidence of computer intrusions prior to May 19 of  
18 2015 -- excuse me, prior to September of 2014?

19 A That is what I am aware of.

20 Q You told us earlier that there were four different  
21 periods, and you listed them off. I believe you earlier told  
22 us September of 2014 that they discovered intrusions?

23 A That was the earliest of the periods that I mentioned,  
24 yes.

25 Q Correct.

SOARES - CROSS - MR. HEALY

1 And in your role at Business Wire, do you feel that  
2 Fidelis's report and findings are accurate?

3 A I feel that Fidelis did a good job, analyzed -- you know,  
4 did the work that they were hired to do.

5 Q And Fidelis also felt there were no intrusions prior to  
6 September of '14, correct?

7 MR. TUCKER: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. HEALY:

10 Q Do you recall in reviewing their reports if they ever  
11 indicated that there had been any intrusion on the  
12 Business Wire systems prior to September of 2014?

13 A I do not recall any intrusion prior to that.

14 Q And the two press release documents that Mr. Tucker  
15 showed you earlier, those two documents were brought to you  
16 from the Government, correct?

17 A Yes.

18 Q As we sit here today, do you have any particular  
19 knowledge, other than what the Government has brought to you,  
20 particular documents, or more specifically, press releases  
21 that were taken off of Business Wire's service?

22 MR. TUCKER: Objection, Your Honor.

23 THE COURT: No, I will permit it.

24 A No.

25 MR. HEALY: No further questions.



SOARES - CROSS - MS. FELDER

1 THE COURT: Any questions?

2 MS. FELDER: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. FELDER:

5 Q Hello.

6 A Hello.

7 Q Just briefly, the Government mentioned a tool to you,  
8 Mimikatz, M-I-M-I-K-A-T-Z --

9 A Correct.

10 Q -- correct?

11 A Yes.

12 Q And you testified that in the past it's a retrieval tool?

13 A That is my understanding.

14 Q And it is a way to steal credentials from a system,  
15 correct?

16 A It can be used that way, yes.

17 Q It can be used to steal credentials like a username?

18 A Yes.

19 Q A user password?

20 A Correct.

21 Q And that tool was being used without the employees'  
22 knowledge at the time, correct?

23 A Correct.

24 Q Okay. And you testified that that happened at  
25 Business Wire?

SOARES - CROSS - MS. FELDER

1 A Yes.

2 Q And the intruder, the computer intruder used those  
3 credentials to access the network?

4 A Other systems on the network, yes.

5 Q Systems on the network.

6 And that, too, was done without Business Wire's  
7 knowledge at the time.

8 A We discovered it very quickly.

9 Q How long did it take for you to discover it?

10 A Mimikatz, I believe it was within the 24 hours of  
11 downloads, if my recollection holds.

12 Q And by that time, the user credentials were already  
13 gathered?

14 A Very likely.

15 Q Thank you.

16 MS. FELDER: No further questions.

17 THE COURT: Anything else?

18 MR. TUCKER: No, Your Honor.

19 THE COURT: Thank you.

20 Sir, you may step down.

21 (The witness exits the witness stand.)

22 THE COURT: Your next witness, please.

23 MR. TUCKER: Thank you, Your Honor. The Government  
24 calls Marty Feil.

25 THE COURTROOM DEPUTY: Sir, I'm going to ask you to

FEIL - DIRECT - MR. TUCKER

1 take the stand and raise your right hand.

2 (Witness takes the witness stand.)

3 MARTIN FEIL, called as a witness, having been first duly  
4 sworn/affirmed, was examined and testified as follows:

5 THE COURTROOM DEPUTY: Thank you. Please have a  
6 seat.

7 THE WITNESS: (Complies.)

8 THE COURTROOM DEPUTY: State and spell your name for  
9 the record.

10 THE WITNESS: Martin Feil, F-E-I-L.

11 MR. TUCKER: May I inquire, Your Honor?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. TUCKER:

15 Q Good morning, Mr. Feil.

16 A Good morning.

17 Q Where are you employed?

18 A Business Wire, San Francisco.

19 Q You work and live in San Francisco?

20 A I work in San Francisco, live outside the city.

21 Q How long have you worked for Business Wire?

22 A About 20 years.

23 Q What is your title at Business Wire now?

24 A I'm the vice president of news technologies.

25 Q What are your responsibilities in that role, just

FEIL - DIRECT - MR. TUCKER

1 generally?

2 A I manage the software development for the work flow for  
3 the news room.

4 MR. TUCKER: Ms. Mulqueen, the document camera,  
5 just for the witness.

6 THE COURT: Just for the witness.

7 BY MR. TUCKER:

8 Q Mr. Feil, I'm showing you what has been marked for  
9 identification Government's Exhibit 801.

10 Do you recognize this CD?

11 A I saw it last night.

12 Q All right. And what is it?

13 A It's a listed of data extracted from our database  
14 regarding the release dates.

15 Q What kind of database?

16 A This is release data. The date the release was uploaded  
17 to our system, the date the release was publicly disclosed,  
18 ticket symbol, customer information.

19 Q And how do you recognize this CD?

20 A I do.

21 Q How do you recognize it?

22 A I initiated it and dated it last night.

23 Q All right. Now, just so it's clear for the record, had  
24 you seen this data that was on the CD prior to reviewing this  
25 particular CD last night?

FEIL - DIRECT - MR. TUCKER

1 A Yes. Yes, I'd seen it.

2 Q How did you come to see it?

3 A Well, I produced the data based on requests from our  
4 company.

5 Q All right. And this data, does it pertain to  
6 distribution times and dates, upload times and dates of press  
7 releases for Business Wire's systems?

8 A Yes.

9 Q And does Business Wire retain that data in the ordinary  
10 course of business?

11 A Yes, we do.

12 Q Very generally, how does Business Wire use these uploads  
13 and distribution data?

14 A It's the basis of data on which we run our business.

15 Q Is it, among other things, an archive?

16 A Archival data of full history of the release.

17 Q Is this archive populated at or close to the time in the  
18 events described, namely the upload and distribution of press  
19 releases?

20 A Yeah. We have automated processes that upload and record  
21 that data.

22 Q And so it's clear, you reviewed this content. Is it an  
23 accurate copy of that data as you extracted it from  
24 Business Wire's systems?

25 A It is.

FEIL - DIRECT - MR. TUCKER

1 MR. TUCKER: Your Honor, the Government moves to  
2 admit Government's Exhibit 801 into objection.

3 THE COURT: Any objection?

4 MR. HEALY: No objection.

5 MS. FELDER: Your Honor, objection based on  
6 relevance, based on the dates.

7 THE COURT: Based on the dates?

8 What are the dates that are covered in this data on  
9 801?

10 THE WITNESS: I think 2011 through 2015.

11 THE COURT: Overruled. 801 is in evidence.

12 (Government Exhibit 801, was received in evidence.)

13 MR. TUCKER: Thank you, Your Honor.

14 May we publish just for a moment so the jury can  
15 see?

16 THE COURT: Go ahead.

17 BY MR. TUCKER:

18 Q Is that the CD you were just testifying about with that  
19 upload and distribution data? Now that the jury can see; is  
20 that right, Mr. Feil?

21 A Correct, yes.

22 Q All right.

23 MR. TUCKER: Ms. Mulqueen --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- would you mind switching over to the

FEIL - DIRECT - MR. TUCKER

1 podium laptop.

2 THE COURTROOM DEPUTY: That's fine.

3 MR. TUCKER: And for the record, I'm going to show  
4 the witness what is in evidence, which is one of the  
5 constituent files that was saved on 801. This file is called  
6 BW\_ENY\_000001, and this is Tab 2, just for illustrative  
7 purposes.

8 BY MR. TUCKER:

9 Q Can you see that, Mr. Feil?

10 A I can.

11 Q Can you just explain to the jury what is the significance  
12 of this column, Date Time Uploaded Eastern?

13 A That is the date the order was received into our newsroom  
14 at Eastern time.

15 Q So that's when the initial draft press release is  
16 uploaded in the Business Wire's system?

17 A That's correct.

18 Q What about Customer Name?

19 A The name of the customer who the release is regarding.

20 THE COURT: Did I hear you say, in Eastern time?

21 THE WITNESS: That is correct.

22 THE COURT: Eastern, that's Standard Eastern U.S.  
23 time.

24 THE WITNESS: Eastern U.S. time, yes.

25 MR. TUCKER: Thanks for clarifying, Judge.

FEIL - DIRECT - MR. TUCKER

1 BY MR. TUCKER:

2 Q And that's actually reflected in the heading; is that  
3 right, Mr. Feil?

4 A Yes.

5 Q And then there's an entry for Tickers. What is that?

6 A That's the stock -- stock symbol or ticker of the  
7 company. It was a publicly traded company.

8 Q And Release Time Off Eastern, what is that?

9 A That's the time the release was publicly disclosed.

10 Q So it's clear, is that the time when the decryption key  
11 is distributed?

12 A That's correct.

13 Q And finally, Main Headline, what is that?

14 A The headline of that particular press release.

15 Q All right. So just turning your attention specifically  
16 to this entry here, which is for the record, Row 30701. This  
17 is for the press release headline, Veeva Announces Fiscal 2016  
18 First Quarter Results.

19 Did I read that right?

20 A Yes.

21 Q I'm now showing --

22 MR. TUCKER: If we could switch back to the document  
23 camera for a moment?

24 THE COURTROOM DEPUTY: Back to the document. Okay.  
25 Just one second.



FEIL - DIRECT - MR. TUCKER

1 BY MR. TUCKER:

2 Q Showing what's in evidence, 3169-A1. That is the  
3 corresponded press release, Veeva Announces Fiscal 2016 First  
4 Quarter Results?

5 A Yes.

6 MR. TUCKER: And one more time, Ms. Mulqueen, back  
7 to the laptop.

8 THE COURTROOM DEPUTY: The laptop. Okay.

9 MR. TUCKER: Thank you so much.

10 BY MR. TUCKER:

11 Q Just so it's clear, this first entry, that press release  
12 was uploaded on May 27th of 2015, at 9:47 p.m.; is that right?

13 A That's correct.

14 Q And its distribution time and date was May 28th, 2015 at  
15 4:03:00 p.m.; is that right --

16 A That's correct.

17 Q -- according to this data.

18 A Yes.

19 MR. TUCKER: One moment, Your Honor.

20 THE COURT: Yes, sir.

21 MR. TUCKER: No further questions, Your Honor.

22 THE COURT: Thank you.

23 Cross?

24 MR. HEALY: No question, Your Honor.

25 THE COURT: Thank you.

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 Ms. Felder?

2 MS. FELDER: No questions, Your Honor.

3 THE COURT: Thank you, Mr. Feil. Step down, if you  
4 will.

5 (The witness exits the witness stand.)

6 THE COURT: Next witness?

7 MR. GOPSTEIN: The Government calls Kelly  
8 Cunningham.

9 THE COURTROOM DEPUTY: Good morning,  
10 Ms. Cunningham. I'm going to ask you to take the stand and  
11 raise your right hand.

12 (Witness takes the witness stand.)

13 KELLY CUNNINGHAM, called as a witness, having been first duly  
14 sworn/affirmed, was examined and testified as follows:

15 THE COURTROOM DEPUTY: Please have a seat.

16 State and spell your name for the record.

17 THE WITNESS: Kelly Cunningham, K-E-L-L-Y,  
18 C-U-N-N-I-N-G-H-A-M.

19 THE COURTROOM DEPUTY: Thank you.

20 MR. GOPSTEIN: May I inquire?

21 THE COURT: Go ahead, Mr. Gopstein.

22 MR. GOPSTEIN: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. GOPSTEIN:

25 Q Good morning.

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 A Good morning.

2 Q Where do you work?

3 A I work at the FBI.

4 Q What is your title at the FBI?

5 A My title is special agent.

6 Q All right. Are you assigned to a particular unit at the  
7 FBI?

8 A Yes. I'm assigned to a cyber squad in the New York  
9 office.

10 Q For about how long have you been assigned to a cyber  
11 squad?

12 A Approximately two year.

13 Q Generally speaking, what are your responsibilities on  
14 that squad?

15 A My responsibilities include investigating cyber-related  
16 crimes.

17 Q Now, before becoming a special agent on the cyber squad,  
18 what did you do?

19 A I was a digital forensic examiner for the FBI.

20 Q Okay. And for about how long did you have that position?

21 A For two years.

22 Q And as part of your role as a forensic examiner, did you  
23 examine electronic devices?

24 A Yes, I did.

25 Q Just very generally speaking, what did that process

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 entail?

2 A It entailed obtaining and processing digital evidence, to  
3 include hard drives, computers, mobile devices.

4 Q About how many mobile devices a year did you examine?

5 A About over a hundred a year.

6 Q And did you keep records of your examinations?

7 A Yes, I did.

8 Q Now, prior to testifying here today, did you review a  
9 report of any examination that you conducted on or about  
10 October 2nd of 2015?

11 A Yes, I did.

12 Q Now, I'm showing you --

13 MR. GOPSTEIN: -- and I will publish for the jury  
14 what is already in evidence as Government's Exhibit 487-P.  
15 Thank you.

16 THE COURTROOM DEPUTY: I'm sorry 4, 8, 7 dash P?

17 MR. GOPSTEIN: 487-P. Thank you.

18 THE COURTROOM DEPUTY: Thank you.

19 BY MR. GOPSTEIN:

20 Q Now, Agent Cunningham, do you recognize this photograph?

21 A Yes, I do.

22 Q What is it?

23 A It is the iPad that was used from the address on the  
24 label above.

25 Q Just so that we are clear for the record, are you

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 pointing to the label up at the top of the photo that says the  
2 date 8/11/15 and then starting with 1709 the row?

3 A Yes.

4 Q And turning your attention down on the iPad, are these  
5 your initials here, KC?

6 A Yes.

7 MR. GOPSTEIN: If I could show just for the witness?

8 THE COURTROOM DEPUTY: Just bear with me one  
9 second.

10 (Pause in proceedings.)

11 THE COURTROOM DEPUTY: Okay. Just for the witness.

12 (Pause in proceedings.)

13 BY MR. GOPSTEIN:

14 Q Okay. Showing you what's been marked for identification  
15 as Government's Exhibit 423. Do you recognize this?

16 A Yes.

17 Q What is it?

18 A It is a report of the previously shown iPad.

19 Q Is this a true and accurate -- is this a report to be  
20 forensic examination conducted of the iPad?

21 A Yes.

22 Q And that's the iPad that's depicted in 487-P?

23 A Yes.

24 Q And is this a true and accurate copy of the report?

25 A It is.

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 MR. GOPSTEIN: The Government moves to admit  
2 government 423 into evidence.

3 THE COURT: Any objection?

4 MS. BRILL: No, Your Honor.

5 THE COURT: 423 in evidence.

6 (Government Exhibit 423, was received in evidence.)

7 MR. GOPSTEIN: Permission to publish, Your Honor.

8 THE COURT: Go ahead.

9 BY MR. GOPSTEIN:

10 Q We're now on the cover page of Government's Exhibit 423.  
11 And is this your name over here next to examiner name?

12 A Yes.

13 Q And working down to Row 15, do you see something  
14 resembling a serial number?

15 A Yes.

16 Q And the numbers next to it, is that the serial number of  
17 the iPad that you searched?

18 A Yes.

19 Q Now, directing your attention to Page 3 of the report,  
20 the section titled Contact. Now, the first contact, will you  
21 just read for the jury what it says here next to Name?

22 A Echo Sound Test Service.

23 Q And the second contact?

24 A Igor Dubovoy.

25 Q Now, there's a third contact here. I assume you can't

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 read that, correct?

2 A Correct.

3 Q Okay.

4 Directing your attention to the right where it says  
5 Value. Can you just read that for the jury?

6 A Dubovoy, P.

7 Q Now, are these the three contacts that were contained in  
8 your report of the extraction of the iPad?

9 A Yes.

10 Q Now, directing your attention to Page 36 of the report,  
11 where it says emails 8, what does that mean?

12 A Those were emails that were found on iPad.

13 Q Are those all the emails that were found and included in  
14 your report?

15 A Yes.

16 Q Now turning to the following day. If I could direct your  
17 attention to the entry over here that begins with 2012-07-30.  
18 What is this?

19 A That is the subject of the email.

20 Q And who was that email from?

21 A It was from stargatell@email.ua.

22 Q Who was the email to?

23 A stargatell@email.ua.

24 Q And when was it sent?

25 A It was sent July 30th, 2012.

CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 Q And what was the subject of the email?

2 A The subject was 2012-07-30\_14-36.

3 Q What was the text of the email?

4 A The text of the email was Update.

5 Q And was there an attachment to this email?

6 A Yes, there was.

7 Q Now, when you created your forensic report of this iPad,  
8 did you create a version of a report that contains a live  
9 link?

10 A Yes, sir.

11 Q And did you try to open the attachment to the email that  
12 we're looking at right now?

13 A I did.

14 Q And were you able to?

15 A No.

16 Q What happened?

17 A Well, our software wasn't able to extract the attachment.

18 Q Working our way down staying on the same page the next  
19 entry, is this another email from stargatell@email.ua?

20 A Yes.

21 Q And who received this email?

22 A stargatell@email.ua.

23 Q And when was this one sent?

24 A This was sent July 30, 2012.

25 Q And what was the subject?



CUNNINGHAM - DIRECT - MR. GOPSTEIN

1 A The subject was 2012-07-30\_13-34.

2 Q And what was the text of the email?

3 A The text was Update.

4 Q And did this email have an attachment as well?

5 A Yes.

6 Q Did you try to open this attachment as well?

7 A Yes, I did.

8 Q Were your able to?

9 A No.

10 Q For the same reason as the previous email?

11 A Yes.

12 Q How many additional emails did you find from  
13 stargate11@email.ua to stargate11@email.ua in the iPad that  
14 was recovered on August 11, 2015?

15 A I believe one more, but I would have to look at the  
16 report to refresh my memory.

17 Q Let's turn to Page 38 of the report. Is this another  
18 entry?

19 A Yes.

20 Q And is this another entry?

21 A Yes.

22 Q So were there four?

23 A Correct.

24 Q All sent from stargate to stargate?

25 A Yes.

CUNNINGHAM - CROSS - MS. BRILL

1 Q And did you try to access the attachments for all four of  
2 these emails?

3 A I did.

4 Q And were not able to do so for all four?

5 A Correct.

6 MR. GOPSTEIN: One second.

7 (Pause in proceedings.)

8 MR. GOPSTEIN: Thank you. No further questions.

9 THE COURT: Yes, sir.

10 Any cross, folks?

11 MS. BRILL: Yes, Your Honor. Can I also ask  
12 Mr. Healy to use his technological prowess and put that  
13 exhibit up on the laptop?

14 MR. HEALY: We're putting Exhibit 423 in evidence.  
15 We're at the middle table.

16 THE COURTROOM DEPUTY: Okay. Thank you.

17 THE COURT: Is this what you're looking for?

18 MS. BRILL: Yes, Your Honor, the first page of it.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MS. BRILL:

22 Q Agent Cunningham, that is the report that you've been  
23 testified about when you answered questions for the  
24 prosecutor, right?

25 A Yes.

CUNNINGHAM - CROSS - MS. BRILL

1 Q And it's a report about an iPad that was seized on  
2 August 11, 2015, right?

3 A Yes.

4 Q And surely somebody was in possession of that iPad on  
5 August 11, 2015, right?

6 A Yes.

7 Q But you don't know when that person came into possession  
8 of the iPad, correct?

9 A We maintain a chain of custody when we seize evidence at  
10 a location, so I assigned a chain of custody when I receive  
11 the evidence.

12 Q So you're talking about what happens after this tool is  
13 in possession, right?

14 A Yes.

15 Q Agent took possession on August 11, right?

16 A Correct.

17 Q And then you examined it beginning on October 2nd, 2015,  
18 right?

19 A Yes.

20 Q And you keep track of that and that's those stickers that  
21 we saw on the back of the iPad, right?

22 A Yes.

23 Q And I'm talking about who was in possession before  
24 August 11th, 2015. You don't know who was in possession  
25 before that time, correct?

CUNNINGHAM - CROSS - MS. BRILL

1 A Correct.

2 Q Okay. And you don't know when anyone prior to  
3 August 11th came into possession of that iPad, correct?

4 A Correct.

5 Q You don't know who purchased the iPad, right?

6 A Correct.

7 Q And you don't know who actually used it after it was  
8 purchased, correct?

9 A Correct.

10 Q That's not what you were examining, right?

11 A Right.

12 Q But you do know that you can examine the iPad and you can  
13 extract information, right?

14 A Yes.

15 Q And that's the report that we're looking at, Exhibit 423,  
16 right?

17 A Yes.

18 (Continued on the next page.)

19

20

21

22

23

24

25

CUNNINGHAM - CROSS - MS. BRILL

1 BY MS. BRILL:

2 Q On the first page, let me ask a couple of questions about  
3 the first page and about the extraction in general. That  
4 extraction gives some indications, something like what we're  
5 looking at here, 221 pages of indications, of what has  
6 happened on that iPad, right?

7 A Yes.

8 Q And you can see the applications or the apps on the iPad  
9 from what you did, right?

10 A Yes.

11 Q You could see information about e-mailing and texting and  
12 Skyping from what you did, right?

13 A Yes.

14 Q But we don't know who was in possession when those things  
15 happened, correct?

16 A Correct.

17 Q We don't know who installed the applications?

18 A Correct.

19 Q We don't know who sent or received the e-mails, right?

20 A Correct.

21 Q We don't know who did any of the texting, right?

22 A Correct.

23 Q And we don't know who did any of the Skyping, right?

24 A Right.

25 Q There is some, there is another indication on the first

CUNNINGHAM - CROSS - MS. BRILL

1 page -- maybe, is the jury seeing what I'm seeing, which is  
2 small picture or seeing the words that I can't read up there?  
3 Can everybody see -- keep up going up a little bit, halfway  
4 down on that page, there is a device name, right, Mark's iPad?

5 A Yes.

6 Q That's a name that was given to the device.

7 A Correct.

8 Q By somebody who was in possession of it at some point,  
9 right?

10 A Correct.

11 Q Do you know who Mark is?

12 A No.

13 Q Do you know the name Mark Dubovoy?

14 A Yes.

15 Q You do know the name Mark Dubovoy?

16 A Yes.

17 Q That has some relationship to this investigation, right?

18 A Correct.

19 Q I want to ask Mr. Healy to do what he does best and do a  
20 search. And let's search the first thing that we can search  
21 for on Exhibit 423 is Igor, I-G-O-R.

22 The first time we see a hit on the name Igor is in a  
23 call log, but that's actually Skype calls if you look to the  
24 right side, it's a series of Skype calls, right?

25 A Yes.

CUNNINGHAM - CROSS - MS. BRILL

1 Q That series of Skype calls took place on December 19,  
2 2012, right?

3 A Yes.

4 Q So that's about five months after the series of e-mails  
5 that you talked about earlier that took place on July 2012,  
6 right?

7 A Yes.

8 Q So it looks like there is a Skype call in December of  
9 2012. And can you read the participants the ones can you read  
10 in those Skype calls?

11 A Yes. Igor Dubovoy, Vishevsky.Roman, DubovoyP.

12 Q And something in Russian underneath that, right?

13 A Yes.

14 Q There is a first call with three of those people; a  
15 second call with three or four people; a second call possibly  
16 with two of those people; a third call two or three of those  
17 people; a fourth call with one or two of those people, right?

18 A Yes.

19 Q That's what we can read from your extraction, right?

20 A Yes.

21 Q If we keep on searching for the word Igor we come to  
22 another indication, I think that's part of the Skype situation  
23 on December 19, 2012, right?

24 A Yes.

25 Q Keep ongoing. You see what you pointed out that one of

CUNNINGHAM - CROSS - MS. BRILL

1 the contacts in the iPad is Igor Dubovoy, right?

2 A Yes.

3 Q With an address of Atlanta U.S., right?

4 A Yes.

5 Q Keep ongoing. We can see that there is a couple of  
6 messages from and call log messages from Igor Dubovoy right on  
7 this page, which is page 41 or 42 of the report.

8 A Yes.

9 Q Keep ongoing. Search the word Igor. Again we see a  
10 couple of calls involving Igor Dubovoy and somebody else,  
11 right?

12 A Yes.

13 Q And additional information involving Igor Dubovoy. Now  
14 we finally get to a section, what is this section, what is  
15 this section that enables you to extract web history?

16 A I believe this is part of the timeline report. I can't  
17 see the title of the section of the report, but it includes,  
18 as you can see, IP connections, web history, a timeline of  
19 events that occurred on the iPad.

20 Q If we go down to the one that indicates Igor Dubovoy, it  
21 looks like Igor Dubovoy something corporate about Igor Dubovoy  
22 and something called OptionsHouse, right?

23 A Yes.

24 Q It seems like the name Igor Dubovoy is associated with  
25 OptionsHouse, right, at least in that entry of web history



CUNNINGHAM - CROSS - MS. BRILL

1 which takes place all the way in 2014, right?

2 A Yes.

3 Q Another indication of Igor Dubovoy's corporate account  
4 and OptionsHouse, right?

5 A Yes.

6 Q Another one, right?

7 A Yes.

8 Q Another indication of Igor Dubovoy's account with  
9 OptionsHouse?

10 A Yes.

11 Q Yet another one?

12 A Yes.

13 Q Now we have a contact of Igor1964, somehow associated  
14 with Interactive brokers; is that correct?

15 A Correct.

16 Q And what is -- seeing what you see right here, can you  
17 tell us what section of your extraction that is?

18 A I'm not sure what section it is.

19 Q Maybe we can scroll up, while keeping the search the  
20 same. That's the configuration section?

21 A Yes.

22 Q We were talking about Igor1964 and Interactive brokers,  
23 some configuration was made for that?

24 A It appears there is some sort of data file. Could we go  
25 back? Yes, the Igor name is appears to be part of, related

CUNNINGHAM - CROSS - MS. BRILL

1 to, that Interactive brokers.

2 Q Keep ongoing. We have another entry for Igor Dubovoy  
3 talking about how many events involve him, right, phone  
4 events, other events.

5 A I'm not sure what section this is, if can you scroll up.

6 Q Activity analytics. Go back to the entry for Igor.  
7 There is several, there is a total of three events, correct,  
8 involving the name Igor Dubovoy, right?

9 A For that specific Igor.Dubovoy account, yes.

10 Q Keep ongoing. Is that the beginning again? It's the  
11 end, so --

12 THE COURT: I didn't hear you.

13 MR. GOPSTEIN: Never mind.

14 Q -- that's the last entry of Igor at this point. Two more  
15 involving Skype, correct?

16 A Yes.

17 Q Below that -- by the way, you see DD export, entry three  
18 under Skype, do you see that?

19 A Yes.

20 Q That's also something that you extracted, right?

21 A Correct.

22 Q I'm going to ask you to do another report, Mr. Healy --  
23 another search, sorry, for Dawson D-A-W-S-O-N.

24 We see DD export and Dawson and the Skype service  
25 have also been associated with this iPad, right?

CUNNINGHAM - CROSS - MS. BRILL

1 A Yes.

2 Q Based on your extraction, right?

3 A Correct.

4 Q You see an e-mail address there Dubovoy1@gmail.com,  
5 right?

6 A Yes.

7 Q Can we look for APD? We see there an entry for  
8 APDCapital1964@gmail.com, right, on that iPad?

9 A Yes.

10 Q Finally can we do a search for K-O-R-C-H. There is an  
11 entry there SKorchevsky@hotmail.com?

12 A Yes.

13 Q And that's an entry in what? Mr. Healy, if we scroll up  
14 a little bit. In the user accounts, so  
15 SKorchevsky@hotmail.com seems to have a user account on the  
16 iPad?

17 A Yes.

18 Q Do you know, is the initial S followed by Korchevsky  
19 something familiar to, you associated with this case?

20 A No.

21 Q Can we scroll down for more K-O-R-C-Hs? We see a search  
22 for Korchevsky maybe one time, is that what that indicates to  
23 you?

24 A I can't see what section. It's in this the user  
25 dictionary section, maybe a common word that's been used on

CUNNINGHAM - REDIRECT - MR. GOPSTEIN

1 this iPad.

2 Q The frequency being one, what does that mean to you?

3 A It's recorded as being used once. But I'm not sure if  
4 it's used anymore than that.

5 Q Okay. Keep on searching for K-O-R-C-H. Again, we have  
6 an entry for that SKorchevsky@hotmail.com e-mail address,  
7 right?

8 A Yes.

9 Q Are there any more K-O-R-C-Hs on this iPad? If we're  
10 back to the user accounts, does that mean there are no more  
11 K-O-R-C-H entries in the extraction that you made of this  
12 iPad?

13 A Yes.

14 MS. BRILL: Nothing further at this time.

15 THE COURT: Anything further, Ms. Felder?

16 MS. FELDER: No, your Honor.

17 THE COURT: Anything from the Government?

18 MR. GOPSTEIN: Very briefly, your Honor.

19 REDIRECT EXAMINATION

20 BY MR. GOPSTEIN:

21 Q You were shown a number of entries in your extract report  
22 with the name Igor Dubovoy, do you recall that?

23 A Yes.

24 Q You were asked to read a number of those entries into the  
25 record.

CUNNINGHAM - RECROSS - MS. BRILL

1 A Yes.

2 Q I'd like to direct your attention to page 41 of the  
3 report, right here, do you see an entry that it says from  
4 Igor.Dubovoy?

5 COURTROOM DEPUTY: Excuse me for a second, are you  
6 using the document camera?

7 MR. GOPSTEIN: The Elmo.

8 COURTROOM DEPUTY: Okay. Thank you.

9 Q I'd like to direct your attention to an entry you were  
10 not asked to read. This is, just starting with the time  
11 stamp, what is the entry here?

12 A December 19, 2012, 8:14:35 p.m.

13 Q And the party?

14 A Igor.Dubovoy.

15 Q What does "from" mean?

16 A The sender of the message.

17 Q Then if can you read the content of the message?

18 A Please add me as a contact.

19 MR. GOPSTEIN: Thank you. No further questions.

20 MS. BRILL: I do have short recross based on that  
21 redirect, your Honor.

22 THE COURT: Go ahead.

23 RECROSS-EXAMINATION

24 BY MS. BRILL:

25 Q I'm going to put page 41 back on there. It looks to me

CUNNINGHAM - RECROSS - MS. BRILL

1 like this is a section where you were able to extract instant  
2 messages, right?

3 MR. GOPSTEIN: Objection.

4 THE COURT: Ask the witness. Let's scroll up or  
5 down.

6 Q I'm looking at the, it comes right after the number 29.

7 A I believe it is from a Skype message. Are there  
8 additional columns to the right?

9 Q There is the column to the right, it doesn't have a  
10 heading, that's the whole column to the right. I'll take off  
11 this yellow sticky.

12 I can put page 39 on top of it which is the first  
13 page of this section -- actually not, I'm sorry. It's part of  
14 the timeline that could be found on page 40, it begins with  
15 number one on page 40.

16 A Yes.

17 Q And then this is entry number 29 on the timeline, the one  
18 that you were just speaking to the prosecutor about?

19 A Yes.

20 Q So that's an instant message on Skype?

21 A I believe it's from Skype, it may be in the Skype message  
22 section as well.

23 Q So it looks like Igor Dubovoy wanted to be added as a  
24 contact on Skype, right?

25 A Yes.

CUNNINGHAM - RECROSS - MS. BRILL

1 Q And that happened on December 19, 2012, right?

2 A Yes.

3 Q Happened on the same day as the Skype call that we spoke  
4 about earlier when I was questioning you earlier, right?

5 A I don't recall the date.

6 Q The Skype call was on page two of the report, a series of  
7 Skype calls. That series of Skype calls took place on  
8 December 19, 2012, right?

9 THE COURT: It's out of focus.

10 MS. BRILL: Mr. Healy, could you pull up page two?

11 Q So the Skype calls, the series of Skype calls that we  
12 spoke about earlier was that same date December 19, 2012?

13 A Yes.

14 Q Those Skype calls did involve Igor Dubovoy, Roman  
15 Vishevsky, and someone named DubovoyP, correct?

16 A Yes.

17 Q Those were the people involved in those Skype calls?

18 A Yes.

19 Q Then December 19 once again, which is about five months  
20 after the date of the e-mails that you were talking being  
21 which was July 30, 2012, right?

22 A Yes.

23 MS. BRILL: Nothing further, your Honor.

24 THE COURT: Anything else?

25 MR. GOPSTEIN: Nothing further. Thank you, your

CAROCCI - DIRECT - MR. GOPSTEIN

1 Honor.

2 THE COURT: You may step down. Next witness please.

3 (Whereupon, the witness was excused.)

4 MR. GOPSTEIN: Government called Thomas Carocci.

5 COURTROOM DEPUTY: Please raise your right hand.

6 (Witness takes the witness stand.)

7 THOMAS CAROCCI, called as a witness, having been first duly  
8 sworn/affirmed, was examined and testified as follows:

9 THE WITNESS: I do.

10 COURTROOM DEPUTY: State and spell your full name.

11 THE WITNESS: Thomas, Carocci, C-A-R-O-C-C-I.

12 MR. GOPSTEIN: May I inquire?

13 THE COURT: Yes.

14 DIRECT EXAMINATION

15 BY MR. GOPSTEIN:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Where do you work?

19 A I work for FINRA. FINRA stands for the Financial  
20 Industry Regulatory Authority.

21 Q What does FINRA do?

22 A We regulate individuals and firms that sell securities  
23 such as stocks and bonds to the investing public.

24 Q Is FINRA a private organization or part of the  
25 Government?



CAROCCI - DIRECT - MR. GOPSTEIN

1 A We're a private, self-regulatory organization.

2 Q Who are FINRA's members?

3 A Our members would be brokerage firms. You may have heard  
4 some of these like E-Trade, TD Ameritrade, Goldman Sachs,  
5 firms of that nature that deal with the public regarding  
6 securities.

7 Q Are brokerage firms employees members of FINRA as well?

8 A They are required to be registered with FINRA as well,  
9 both the firms and the employees that buy and sell securities  
10 on behalf of the investing public.

11 Q Those are often referred to as broker/dealer?

12 A Yes.

13 Q What do a broker/dealer do?

14 A A broker/dealer would be a firm made up of individuals,  
15 obviously, that can buy or sell securities stocks, bonds, on  
16 behalf of the investing public, individual investors who are  
17 entities, pension funds, hedge funds, mutual funds. And they  
18 can do it on behalf of others or on their own accounts.

19 Q How does FINRA regulate broker/dealers?

20 A We have a rule book. And the member firms and the  
21 individuals registered with FINRA agree to abide by that rule  
22 book in the conduct of their business.

23 And then we have an enforcement department that  
24 would investigate any rules violations and bring actions. We  
25 can bar, suspend individuals and firms from the industry. We

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1 can also fine them an amount of money.

2 We also conduct examinations of these member firms,  
3 so FINRA employees. We go out and examine their books and  
4 records, the processes and procedures to try to ensure they  
5 are following the FINRA rules as well as federal securities  
6 laws.

7 Q Who oversees FINRA?

8 A We're over seen by the Securities & Exchange Commission,  
9 the SEC.

10 Q What is the SEC?

11 A That is a federal Government entity agency. That  
12 regulates the securities industry, both anybody who buys or  
13 sells stocks, as well as the publicly-traded companies so the  
14 companies that are trading on an exchange.

15 Q Mr. Carocci, how long have you worked at FINRA?

16 A For approximately 18 years.

17 Q What is your current position?

18 A I'm assistant general counsel for the criminal  
19 prosecution assistance group.

20 Q About how long have you been in that group?

21 A Approximately 14 years, 13, 14 years.

22 Q Generally speaking, what does your group do?

23 A We assist federal, state, local investigators and  
24 prosecutors with their white-collar criminal investigations  
25 and trials.

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1 Q What kind of assistance do you provide?

2 A So if we're getting on the investigative stage, we might  
3 do analysis of trading, books and records or other documents.  
4 And then we would testify to that analysis at trial.

5 Q What did do you for your first few years at FINRA prior  
6 to joining your current group?

7 A I worked for the FINRA corporate finance department.  
8 That department oversees initial public offering of stocks  
9 when the stock is initially sold, and the underwriting so the  
10 firms that take companies public. We regulate that  
11 relationship.

12 I also later worked for the member regulation  
13 department. And that was the department that I kind of  
14 referred to earlier, that goes out and conducts examinations  
15 of member firms.

16 Q Member brokerage firms?

17 A Yes.

18 Q During your time at FINRA have you conducted trainings  
19 for law enforcement agencies?

20 A Yes. We conduct usually two trainings for the Federal  
21 Bureau of Investigation every year, I've done that multiple  
22 times. I've also trained IRS criminal investigations, Postal  
23 Inspection inspectors, as well as United States Attorney's  
24 Offices.

25 Q In addition to your experience at FINRA, do you have any

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1 experience in the private sector?

2 A Yes. I worked for Goldman Sachs for approximately a year  
3 in their regulatory compliance department.

4 Q Generally, what were your responsibilities there?

5 A To respond to requests from the SEC or regulators, such  
6 as FINRA, when they wanted information regarding trades or  
7 something that happened at the firm.

8 Q What is your educational background?

9 A I have a law degree from Duquesne University in  
10 Pittsburgh, Pennsylvania. My undergraduate degrees are in  
11 finance economics.

12 Q Do you have any certifications?

13 A Yes. I'm a certified regulatory compliance professional.  
14 This is a certification that was a partnership between FINRA  
15 and the University of Pennsylvania Awards School of Business.  
16 It is offered to both to regulators, such as myself, and also  
17 industry professionals in the compliance realm, so people who  
18 work for brokerage firms in compliance. And you go for a  
19 couple of weeks over a year-and-a-half period and you get your  
20 certification.

21 Q Do you have any other certifications?

22 A I completed what is called FINRA exam university. That's  
23 an internal FINRA certification where you develop expertise in  
24 the books and records that brokerage firms are required to  
25 keep under FINRA rules and federal securities laws, as well as

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1 their practices and procedures.

2 Q During your time at FINRA and in the private sector, have  
3 you become familiar with the securities industry and the  
4 operation of public securities exchanges?

5 A Yes.

6 Q Have you examined the movement of stock prices of  
7 publicly-traded companies?

8 A Yes.

9 Q Have you become familiar with SEC filings and  
10 regulations?

11 A Yes.

12 Q With FINRA regulations?

13 A Yes.

14 Q Have you provided expert testimony on these topics  
15 before?

16 A Yes, I have.

17 Q Approximately how many times?

18 A Approximately a dozen times.

19 MR. GOPSTEIN: At this time the Government moves to  
20 qualify Thomas Carocci to offer both explanatory and opinion  
21 testimony regarding the securities industry, SEC disclosure  
22 requirements and regulations and FINRA regulations.

23 THE COURT: Any objection?

24 MS. BRILL: No objection.

25 MS. WHALEN: No objection.

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1 THE COURT: Thank you. You may proceed.

2 Bear in mind what I said yesterday about opinion  
3 witnesses. Go ahead.

4 BY MR. GOPSTEIN:

5 Q Mr. Carocci, you testified that in some of your cases,  
6 you provide assistance in the investigation, did have you any  
7 involvement in the investigation of this case?

8 A No.

9 Q Mr. Carocci, what is a stock?

10 A A stock is a security. It represents an ownership  
11 interest in a company. It's measured by what are called  
12 shares, shares of stock. It represents an ownership interest  
13 in a company.

14 Q What is a security?

15 A A security would be, at a very high level, an investment  
16 of money, expecting a rate of return, expecting some type of  
17 profit on your money, largely through the efforts of a company  
18 or other third-party.

19 So an example of securities would be stock. You  
20 invest your money expecting a rate of return from investments  
21 of the company. There is bonds, also considered securities,  
22 which is a loan to a company. You would expect an interest  
23 payment on that loan, for the loan, that you continue to be  
24 repaid eventually. Those are the two most common securities.

25 Q What is a publically-traded company?

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1 A A publically-traded company is a company who's stock,  
2 shares of stock, trade so that the investing public can buy and  
3 sell stock in these companies on an exchange or market.

4 Q Who owns a publically-traded company?

5 A The shareholders.

6 Q You testified that publically-traded companies trade on  
7 markets or exchanges what is a market or exchange?

8 A That would be a companies like the NASDAQ, or the New  
9 York Stock Exchange, the two largest in the United States,  
10 where they provide a market for a publically-traded company  
11 stock to trade on.

12 Q Are there certain requirements in order for a  
13 publically-traded company to be listed on either the New York  
14 Stock Exchange or the NASDAQ?

15 A Yes. They both have what is called listing requirements.  
16 So generally the company has to be a certain size, a fairly  
17 large company usually. As far as what is called market  
18 capacity decision, which is just their number of outstanding  
19 shares, so the number of shares issued to the public, issued  
20 to investors times the stock price.

21 Another big listing requirement for the New York  
22 Stock Exchange and NASDAQ is the publically-traded company has  
23 to be what is called current in their Securities & Exchange  
24 Commission filings.

25 Q About how many companies trade on the New York Stock

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1 Exchange?

2 A Approximately 2800 companies.

3 Q About how many companies trade on the NASDAQ?

4 A Approximately 3300 companies.

5 Q Are you familiar with something called the S&P 500?

6 A Yes.

7 Q What is it?

8 A The Standard & Poor's 500, the 500 largest

9 publically-traded companies. And it's, they have an S&P 500

10 Index, which kind of measures the how well those companies are  
11 doing over periods of time.

12 Q Can an investor invest in the S&P 500?

13 A Yes. You can usually do it through a mutual fund. There  
14 are mutual funds that invest in the 500 Index exclusively.

15 You can also do it through options or exchange trader funds.

16 Q What is a rate of return?

17 A A rate of return would be the return on your invested  
18 money. So the gain or the loss on your invested money  
19 generally presented as a percentage of the amount you invest  
20 in.

21 Q What was the rate of return on the S&P 500 in the year  
22 2011?

23 A 2011 it was 2.11 percent.

24 Q So if you invested \$100 in the S&P 500 on January 1st,  
25 2011, about how much money would you have made by the end of



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1 that year?

2 A \$2.11.

3 Q You testified earlier about brokerage firms and the  
4 members of FINRA, do most brokerage firms have things called  
5 trading authorization forms?

6 A Yes. Whenever an individual opens an account they have  
7 to fill out a new account form. And they have to, there has  
8 to be a signer who is an authorized person who is authorized  
9 to trade in that account. In that way it's not much different  
10 than a bank account that anybody would have set up. The bank  
11 wants to know who has proper authorization to execute a  
12 transaction in the bank account, very similar to a brokerage  
13 account.

14 Q Are there any FINRA rules or regulations that govern  
15 brokerage firms books and records?

16 A Yes, we have many rules and regulations that require  
17 brokerage firms to maintain certain books and records. They  
18 need to be accurate books and records.

19 Q Trading authorization forms is one form is used to  
20 maintain accurate books and records?

21 A Yes. Firms are required to know their customers, so know  
22 who is trading in the account and who has permission to trade  
23 in the account.

24 Q What is a clearing firm?

25 A A clearing firm is a type of FINRA member firm that

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1 actually can hold securities, stocks and bonds for the  
2 investors as well as their money that they would use to buy  
3 stocks and bonds or that they would hold in their brokerage  
4 account. They get more scrutiny because they actually hold  
5 assets of investors.

6 Q What is settlement?

7 A Settlement is kind of the end of a trade. So it would be  
8 when the stock that was traded, for example, switched from the  
9 seller's account to the buyer's account and the money to pay  
10 for that stock purchase would be transferred basically from  
11 the buyer's account to the seller's account.

12 Q Now that you defined all these terms, could you walk  
13 through for the jury a typical stock transaction from  
14 beginning to end, where an individual goes into their  
15 brokerage firms then what happens next?

16 A So for example, if an individual wanted to buy shares of  
17 Apple stock, they notify the brokerage firm, either online by  
18 filling out an order form to buy the stock or calling your  
19 broker if you have one. And that broker would then send the  
20 buy order to the market, would post what the individual is  
21 wanting to buy the stock at and how many shares they want to  
22 buy. If that is matched up with someone who is willing to  
23 sell Apple stock basically at that price and for that those  
24 number of shares, a transaction occurs, a trade occurs. I  
25 should say it's agreed upon.

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1 And then it has basically two business days to sell,  
2 for the money to go from the buyer to the seller, and from the  
3 stock to go from the seller's brokerage account to the buyer's  
4 brokerage account.

5 Q What happens after that?

6 A Then, well, the transaction would be complete.

7 At settlement there is a clearing firm. There is  
8 also clearing corporations, which is Depository Trust  
9 Corporation, which they kind of trade on behalf of the  
10 clearing brokers.

11 For example, if in Apple, an E-Trade might have an  
12 account with DTC, so the buyer of the Apple E-Trade would have  
13 shares deposited into their account at the clearing  
14 corporation level. And then E-Trade it would show up in that  
15 individual's account that he bought Apple shares.

16 Q I'd like to ask you about a few different kinds of  
17 investments.

18 Generally speaking, if you think that a company's  
19 stock price is going to go up in the future, it's going to  
20 increase, what kinds of investments would you make?

21 A You would want to be what is called a long, a long  
22 position, bullish position. You're positive about the stock  
23 price increasing.

24 Q What does a long position mean?

25 A It means, for example, you could hold the stock, you

CAROCCI - DIRECT - MR. GOPSTEIN

1 could buy the stock and hold it, and hopefully wait for it to  
2 appreciate in value.

3 Q Are you familiar with something called a call option?

4 A Yes.

5 Q A call what is that?

6 A A call option is a contract basically where you can call  
7 in shares or buy shares at a certain price, a specified price  
8 at a date in the future. So it's called an options contract.

9 Q A call option, if you think that a company stock price is  
10 going to increase in the future, would you enter, would you  
11 buy a call option?

12 A Yes. So for example, if a company is trading \$5 a share  
13 and you think it's going to go up in value. And you're buying  
14 a call option, let's say approximately \$5 a share, and if the  
15 stock went up to \$10 a share, you would have the right to  
16 purchase that stock at only \$5 a share. You would have  
17 profited \$5 a share for however many options contracts you  
18 bought.

19 Q If you think that the price of a stock is going to  
20 decrease in the future, what would kind of investments would  
21 you make if you wanted to make money?

22 A You would want to be what is called short that stock, you  
23 want to be bearish or short that stock.

24 Q What does shorting a stock mean?

25 A Shorting a stock means you can sell a stock, you borrow

CAROCCI - DIRECT - MR. GOPSTEIN

1 the stock generally from a brokerage firm. So you, for  
2 example, Apple, you would borrow let's say 100 shares from the  
3 brokerage firm. Would you sell those shares, and if the stock  
4 dropped you have to eventually go and buy those shares back to  
5 repay those shares to the firm you borrowed them from,  
6 wherever you borrowed them from. So you would sell actually  
7 before you buy, but when you buy back you're buying at a lower  
8 price than what you sold for; so therefore, you can profit  
9 from a decrease in the stock price.

10 Q Is a put option another way to profit from a decrease in  
11 stock price?

12 A Yes. Because that can allow you to put or give shares to  
13 somebody, again at a predetermined price at a predetermined  
14 date in the future.

15 Q Can you explain what a put option is, for the jury?

16 A Right. So let's say you had a stock at \$10 per share.  
17 You thought it was going to decline in price, let's say to \$5  
18 a share, you could enter into a contract roughly that gives  
19 you the right to sell the shares sometime in the future at \$10  
20 per share. If the stock does go down the \$5 per share, you  
21 have the contract that allows you to sell for \$10 per share  
22 the stock that you own.

23 Q So to recap, if you think the price so going to go up  
24 long position or call option?

25 A Yes.

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1 Q Down, short position or put option, generally speaking?

2 A Generally speaking, yes.

3 Q In all of these kinds of transactions that you've been  
4 talking about so far, is there always somebody on the other  
5 end of the transaction?

6 A Stock sales and options contracts are in that way not any  
7 different than selling a house or a car. There are buyers and  
8 there are sellers. And for a transaction to occur someone has  
9 to buy the options, contact the other side, and someone has to  
10 buy the Apple stock or sell the Apple stock for a transaction  
11 to occur.

12 (Continued on next page.)

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1 BY MR. GOPSTEIN:

2 Q What are security filings?

3 A Securities filings are filings that publically traded  
4 companies, such as Apple would make with the Security Exchange  
5 Commission, and there's a few different types. There's --  
6 there's financial statements they are required to be made,  
7 such as what are call 10Q's, which are quarterly -- a publicly  
8 traded company's quarterly financial results, so how much  
9 money they made for a particular quarter. They're required to  
10 filed three of them per year. And then an annual report  
11 called a 10K, which would be their annual financial statement.  
12 They're also required to file what is called 8K's, and 8K's  
13 are a way of letting investors know if anything really  
14 materially important is going on in the company that should be  
15 disclosed to investors. They are required to file them with  
16 the Securities Exchange Commission and it's also a listing  
17 requirement for NASDAQ and New York Stock Exchange, to be  
18 traded on those exchanges.

19 Q And what is Regulation FD?

20 A Regulation FD is regulation fair disclosure. That's what  
21 the FD stands for. And that's basically an SEC regulation  
22 which prohibits selective disclosure of material information.  
23 So if a company has material information that should be  
24 disclosed to the investing public, they have to make a wide  
25 distribution of that information through 8K filings or press

CAROCCI - DIRECT - MR. GOPSTEIN

1 releases. They can't just pick and choose which investors or  
2 individuals or entities to disclosure it to. They have to  
3 disclosure it to all and be transparent to all.

4 Q And approximately when was Regulation FD issued?

5 A In the year 2000.

6 Q If a company violates Regulation FD, what, if anything,  
7 must they do?

8 A Well, they're required to rectify the situation  
9 immediately, meaning if something was selectively disclosed,  
10 they're required to then widely disseminate the information,  
11 widely disclose the information to correct the situation.

12 Q Can you just provide some examples of the kind of  
13 material that is subject to Regulation FD?

14 A Right. I would say, you know, earnings, mergers,  
15 acquisitions, leadership changes in -- in -- in a corporation  
16 at a high level. It's -- it's material information, so  
17 material information is generally defined as anything that an  
18 investor would find important or substantial in making an  
19 investment decision, whether to buy or sell a stock, something  
20 material.

21 Q Are you familiar with something called guidance?

22 A Yes.

23 Q What does that mean?

24 A Those are numbers, financial numbers that companies put  
25 out such as earnings per share, you know, net income, maybe



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1 revenue to -- and it's kind of their expectations, their --  
2 what's called future statements. So it's their expectation of  
3 let's say the next quarter, how well they believe it is go to  
4 go financially or not well financially, but their expectations  
5 financially for the next quarter. And publicly traded  
6 companies generally put that information out, make that  
7 information public.

8 Q Fair to say that earnings and guidance are two of the  
9 kinds of materials that are suggest to Regulation FD?

10 A Yes.

11 Q Mr. Carocci, are there analysts and companies that  
12 analyze and predict what publicly traded companies' earnings  
13 will be?

14 A Yes. There are, you know, financial analysts that follow  
15 publicly traded companies and try and predict their earnings  
16 or, you know, their financial condition in the future to  
17 advise investors as to -- as to whether to basically buy,  
18 sell, or hold the security.

19 Q And generally speaking, if a company beats the analyst  
20 predictions for its earnings, that's good news for the company  
21 stock, right?

22 A Generally that's considered positive because what they're  
23 saying is that financially they have done better than was  
24 expected with the guidance, so it's generally seen as a  
25 positive.

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1 Q And conversely if a company didn't meet analysts'  
2 predicted earnings, how would you expect the company's -- that  
3 is bad news for the company?

4 A That would be considered bad news because they didn't do  
5 financially as well as they thought they were going to do, and  
6 so that's usually a negative and would generally put down the  
7 pressure on stock purchases, generally.

8 Q Now, if a company beats the analysts' earnings  
9 predictions, does its stock price always go up?

10 A No.

11 Q Can you explain why not?

12 A Well, you know, there's hundreds of thousands of reasons  
13 to go -- what investors think of the stock price, and the  
14 stock price is really set by the market. What one individual  
15 is willing to sell a stock is worth more than another  
16 individual -- or entity or pension fund is willing to -- to  
17 sell the security for and what one is willing to buy the  
18 security for. So earnings is certainly one component, and I  
19 would argue a fairly important component, but, you know, there  
20 could be things, you know, where, you know, a company is --  
21 they think they're going to be subject to some type of  
22 litigation or product recall in the future or some type of  
23 geopolitical situation with overseas operations or factories,  
24 tax rates, overseas foreign currency rates overseas than the  
25 United States. So there's -- earnings is not the only

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1 reason -- or the only thing that puts pressure on the stock  
2 price.

3 Q Now, some of these factors that you just listed that can  
4 affect a company's stock price, are some of these factors  
5 sometimes included in the text of earnings press release  
6 itself?

7 A Yes. Sometimes an earnings press release announcement  
8 would have the earnings per share and net income and other  
9 figures like that, but also can sometimes get into discussions  
10 of some of the things I previously mentioned.

11 Q And sometimes are these factors included in other press  
12 releases that are separate from the earnings press releases?

13 A Yes, yes.

14 Q And sometimes other factors that affect stock price are  
15 not in the press release, just public factors?

16 A Yes.

17 Q So if an individual has a company press release prior to  
18 its public distribution, does that mean that the individual  
19 knows how the company's stock price will react?

20 A No, not necessarily.

21 Q What does it mean?

22 A Well, it means that individual would have an  
23 informational advantage. You know, it means no similar -- you  
24 know, if you were a batter in baseball and you kind of knew  
25 what pitch the pitcher was going to through, whether it's

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1 going to be a fastball or a curve ball, if you know what's  
2 coming, you have an informational advantage in the situation.  
3 But you know, you still have to swing the bat. You have to  
4 make contact. You have to hit it where nobody's going to  
5 catch it, or hit it over the fence. So again, there's in  
6 guarantee. But there is an informational advantage.

7 Q And when you say it's "an informational advantage," it's  
8 an informational advantage over whom?

9 A Over basically the rest of the market, other investors  
10 who don't have that, they would be at an informational  
11 disadvantage. And it's really -- the reason for Regulation FD  
12 that I discussed earlier about why I would be disseminating  
13 this information to all of the investors at once, is so that  
14 it's a level playing field. There is transparency in the  
15 market for all investors.

16 FINRA, where I work, our mission is investor  
17 protection and market integrity -- stock market integrity.  
18 And that's what that goes to, stock market integrity.

19 Q Turning back to FINRA, does FINRA have certain rules that  
20 govern the behavior of professionals who work in the security  
21 industry?

22 A Yes.

23 Q And are you familiar with FINRA Conduct Rule 208N?

24 A Yes.

25 Q And what is that?

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1 A That means that the individuals have high standards of  
2 commercial honor and just and equitable principles of trade.  
3 It basically is our rule, our FINRA rule that says if you're  
4 in this industry and registered, you have to have fair  
5 dealings with customers and everybody else that you're dealing  
6 with.

7 Q Is FINRA licensed professionals who are associated with  
8 Wall Street firms?

9 A Yes, we're register. We call them registered, because we  
10 are not the Government. We don't call it licensed. We call  
11 it registration.

12 Q Okay. And are you familiar with the registration  
13 process?

14 A Yes.

15 Q What does somebody have to go in order to become  
16 registered with FINRA?

17 A They have to be employed with a FINRA member firm, and  
18 then they have to take examinations that would test their  
19 knowledge of profits such as stocks and bonds, as well as the  
20 rules, regulations, and federal securities laws regarding the  
21 sell and the trading of those proofs.

22 Q Does FINRA maintain records of the individuals who are  
23 registered with it?

24 A Yes.

25 Q What are these records called?

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1 A It's call our Central Registration Depository or CRD  
2 reports. There's a CRD for each individual in the industry,  
3 registered in the industry, as well as the firms.

4 Q And are any CRD reports maintained by FINRA in the  
5 ordinary course of its business?

6 A Yes.

7 MR. GOPSTEIN: If I could just show for the  
8 witness --

9 THE COURTROOM DEPUTY: Just bear with me one  
10 second.

11 MR. GOPSTEIN: This will be  
12 Government's Exhibit 814, if you want to look for it.

13 THE COURT: Did you say 814?

14 MR. GOPSTEIN: 814.

15 THE COURT: All right.

16 MR. GOPSTEIN: Thank you, Your Honor.

17 BY MR. GOPSTEIN:

18 Q Now I'm showing you what has been marked for  
19 identification as Government's Exhibit 814. Do you recognize  
20 this document?

21 A Yes.

22 Q What is it?

23 A It's a FINRA CRD report.

24 Q Is this FINRA CRD report for what individual?

25 A Vladislav Khalupsky.

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1 Q And is that a true and accurate copy of Khalupsky's CRD  
2 report?

3 A Yes.

4 MR. GOPSTEIN: The Government offers  
5 Government Exhibit 814 into evidence.

6 THE COURT: Any objection?

7 MS. WHALEN: No objection.

8 MR. GOPSTEIN: If I may publish?

9 THE COURT: Received.

10 (Government Exhibit 814, was received in evidence.)

11 MR. GOPSTEIN: Thank you, Your Honor.

12 BY MR. GOPSTEIN:

13 Q We now have Government's Exhibit 814 in evidence up on  
14 display. I am going to turn to Page 3. Do you see here -- up  
15 here? Who is that for?

16 A Vladislav Khalupsky.

17 Q Do you see where it says, State of Resident?

18 A New York.

19 Q Turning our attention down on the page to the section  
20 that is called Registration With Previous Employer. If you  
21 could just read into the record the top entry here?

22 A Right. So from July 28th, 2010 until June 15th of 2011,  
23 Mr. Khalupsky worked for WTS Proprietary Trading Group, LLC.

24 Q And prior to that, the entry right underneath it?

25 A From May 6th of 2003 to October 25th of 2005,

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1 Mr. Khalupsky worked for Hold Brother On-Line Investments --  
2 or I'm sorry. I went three down. I'm sorry. Let me start  
3 over.

4 From September 13th, 2003 to August 1st of 2008  
5 Mr. Khalupsky --

6 Q Do you mean September 13th, 2007?

7 A Correct. I'm sorry. So September 13, 2007 to August 1st  
8 of 2008, Mr. Khalupsky worked for Dimension Brokerage, LLC.

9 Q And then before that, from May 2003 to October 2005 for a  
10 company called Hold Brothers On-Line Investment Services, LLC?

11 A Yes.

12 Q And this category called Registration With Previous  
13 Employers, what does it mean to be registered?

14 A Well, they're registered with FINRA. So they're allowed  
15 to basically conduct any type of activity that their -- that  
16 the exams that they passed would allow them to conduct, most  
17 commonly, you know, assisting the public with the purchase and  
18 sale of securities.

19 Q And can an individual be registered with FINRA without  
20 being employed by a firm?

21 A No.

22 Q Now, turning to Page 5, there is a category called  
23 Employment History right here. Who provides the information  
24 that's included in this section?

25 A Well, it generally comes from -- really most of the



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1 information in this report comes from what is called -- or the  
2 individual in the firm that they're working for, they file  
3 what's called a Form U4 which would provide all of this  
4 information.

5 Q And does the employment history for this report cover two  
6 pages and go all the way back to 1990?

7 A Yes.

8 Q And just generally speaking, where are the locations of  
9 the prior employment listed here for Mr. Khalupsky?

10 A It looks like New York; Brooklyn, New York; New York,  
11 New York; and Brooklyn, New York.

12 Q Now, turning to Page 8 of the report. You have a section  
13 called Exam History. What are we looking at here?

14 A So these would be the exams that Mr. Khalupsky took and  
15 passed, that FINRA administered exams that he took and passed  
16 that would, you know, demonstrate knowledge of the products,  
17 securities, the buying and selling, as well as FINRA rules,  
18 regulations of the Federal Securities laws.

19 Q Starting here where it says under Exam S7. What is the  
20 S7?

21 A That's stands for the Series 7 Examination. It's kind of  
22 the -- it's the -- you know, it's really our -- the exam that  
23 would test, again, your -- it would allow me to buy and sell  
24 securities on behalf of clients and to be a registered rep  
25 with a firm. It's called the General Securities Registered

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1 Representative.

2 Q And did he take this exam?

3 A Yes. He took it on June 1st of 2000 and passed it and  
4 scored 81.

5 Q Working our way down, what is the S55?

6 A That's the equity trader exam. So that's kind of an  
7 advanced exam. So, for example, this Series 7 is a  
8 pre-requisite for taking the Series 55. It really focuses on  
9 trading and trade reporting, as well as the rules,  
10 regulations, Federal Securities Laws regarding that.

11 Q And did he take and pass this exam as well?

12 A Yes. Mr. Khalupsky passed the exam on June 16th of 2000  
13 with a score of 71.

14 Q And finally, we have the S63. What is that?

15 A That's what's called the State Law Exam. So instead of  
16 individuals having to take 50 different exams to sell in all  
17 50 states, the states created an exam, and FINRA administers  
18 the exam. It basically really focuses on Federal Securities  
19 Laws and Security Regulations. You know, that's most of the  
20 exam.

21 Q Thank you.

22 MR. GOPSTEIN: And if I could show one more  
23 document?

24 THE COURTROOM DEPUTY: Just a moment.

25 MR. GOPSTEIN. Thank you.

CAROCCI - DIRECT - MR. GOPSTEIN

1 THE WITNESS: Just the witness.

2 MR. GOPSTEIN: Thank you.

3 BY MR. GOPSTEIN:

4 Q Now, showing what has been marked for identification as  
5 Government's Exhibit 815, what is this document?

6 A This is the CRD, the FINRA CRD report for Vitaly  
7 Korchevsky.

8 Q Is this a true and accurate copy of Korchevsky's CRD  
9 report?

10 A Yes, it is.

11 MR. GOPSTEIN: The Government offers  
12 Government's Exhibit 815 into evidence.

13 THE COURT: 815?

14 MR. GOPSTEIN: 815.

15 THE COURT: Any objection?

16 MR. BRILL: We have no objection.

17 THE COURT: Admitted.

18 (Government Exhibit 815, was received in evidence.)

19 MR. GOPSTEIN: Permission to publish?

20 THE COURT: Go ahead.

21 MR. GOPSTEIN: Thank you.

22 BY MR. GOPSTEIN:

23 Q Turning to Page 3 of Government's Exhibit 815, that is  
24 the whole legal name of Korchevsky there?

25 A Yes.

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1 Q And it says CFA after that. What is that?

2 A So it designates Chartered Financial Analyst. So it's  
3 a -- it's a certification. It's not a FINRA certification.  
4 It's the CFA certification.

5 Q Now moving down like we did before to Registration with  
6 Previous Employers. Please read the top entry there for the  
7 jury.

8 A Okay. From October 4th to 2005 to October 6th of 2008,  
9 Mr. Korchevsky worked for Investment Counselors of Maryland.

10 Q And what was the reason for his termination?

11 A It says Discharged: Position Eliminated.

12 Q And continued to work our way down, the next entry for  
13 the record?

14 A From January 3rd of 2000 to September 21st of 2001,  
15 Mr. Korchevsky worked for Morgan Stanley Distribution.

16 Q And the reason for termination there?

17 A It says, Voluntary.

18 Q Now, according to this report was October 2008 the last  
19 time Mr. Korchevsky was employed with a FINRA-related firm?

20 A Yes.

21 Q And just like you looked at before, is this the  
22 employment history that was provided for Korchevsky?

23 A Yes, it is.

24 Q So that top entry that we just looked at, Investment  
25 Counselors of Maryland?

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1 A Yes.

2 Q And beneath that is there an entry from 2001 to 2005 for  
3 an entity called Vitcus Capital?

4 A Yes.

5 Q And the remaining entries on Pages -- I apologize, Pages  
6 4 and 5, that completes the employment history that was  
7 provided by Korchevsky?

8 A Yes, it is.

9 Q All right.

10 Turning to Page 6 of the report, again, we have an  
11 Exam History. What is being shown here?

12 A Okay. These are Mr. Korchevsky's FINRA exams that he  
13 passed.

14 Q Okay. So I think we had a new exam down here that wasn't  
15 on our last report. It's S6. What is S6?

16 A That's the Series 6 Exam. It's the investment company  
17 variable contracts exam. So the examined individual would  
18 have to pass to sell mutual funds or variable annuity  
19 products. So different types of products for the stocks and  
20 bond that I've been talking about, but still securities.

21 Q And did Mr. Korchevsky pass the S6?

22 A Yes. He passed it on April 9 of 2001 with a score of 90.

23 Q Now, turning down, looking down on the page we have the  
24 S63 again. Is that the same S63 that you just testified about  
25 with regard to Mr. Khalupsky's --

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1 A Yes.

2 Q -- CRD report?

3 A Yes, it is.

4 Q And did Mr. Korchevsky pass the S63?

5 A Yes, March 28th of 2001. He passed it with a score of  
6 82.

7 Q Now, we just looked at a number of different exams that  
8 FINRA conducts. Does FINRA publish outlines on topics that  
9 are covered on these exams?

10 A Yes. They're study guides that individuals can use to  
11 review the topics that are covered on the exam in preparation  
12 for taking it.

13 Q And starting with the Series 63, which I believe is the  
14 exam you testified that both Korchevsky and Khalupsky passed.  
15 Does that exam cover fraudulent and prohibitive practices?

16 A Yes. So that's about 45 percent of the exam questions  
17 are on fraudulent and other prohibitive practices.

18 Q And one of prohibitive practices that the exam covers is  
19 trading on material nonpublic information?

20 A Yes, that's one of the topic.

21 Q And does the study guide that FINRA provides for the  
22 exams address this?

23 A Yes. It's a section that says that that -- you know,  
24 that that will be the subject on the exam.

25 Q In total how many FINRA exams did the Defendant Vitaly

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1 Korchevsky pass?

2 A Korchevsky passed two exams, the Series 6 and a  
3 Series 63.

4 Q How many did Defendant Khalupsky pass?

5 A Three exams.

6 Q And did each of the exam that the defendants passed,  
7 cover securities regulations?

8 A Yes.

9 Q Did FINRA study manuals on these exams address the  
10 prohibition of fraudulent practices?

11 A Yes, it does.

12 Q Thank you.

13 MR. GOPSTEIN: One second.

14 (Pause in proceedings.)

15 MR. GOPSTEIN: No further questions.

16 Thank you, Mr. Carocci.

17 THE COURT: Well, this strikes me as a logical time,  
18 so we will break to take our luncheon break and resume at  
19 2:05. Enjoy your lunch, and please don't discuss the case,  
20 folks.

21 THE COURTROOM DEPUTY: All rise.

22 (Jury exits the courtroom.)

23 (The following matters occurred outside the presence  
24 of the jury.)

25 THE COURT: Enjoy your lunch. Be back at 2:05.

CAROCCI - CROSS - MR. BRILL

1 (AFTERNOON SESSION)

2 THE COURTROOM DEPUTY: All Rise

3 THE COURT: Please be seated, folks. Mr. Brill,  
4 whenever you're ready.

5 MR. BRILL: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. BRILL:

8 Q Good afternoon, Mr. Carocci.

9 A Good afternoon.

10 Q How are you?

11 A Good. How are you?

12 Q You told us today on your direct testimony that there is  
13 approximately almost 3,000 stocks that are traded on the New  
14 York Stock Exchange, 2800?

15 A Yes.

16 Q And even more than 3,000 on the NASDAQ?

17 A That's correct.

18 Q These are all public companies?

19 A Yes, publically-traded companies.

20 Q One requirement you mentioned with respect to  
21 publically-traded companies are that they have to fill out and  
22 submit a 10Q form, 10Q submissions?

23 A With the SEC, yes.

24 Q And that's done three times a year?

25 A Three fiscal quarters, yes.



CAROCCI - CROSS - MR. BRILL

1 Q Also an annual submission which is called a 10K also with  
2 the SEC, yes?

3 A Yes.

4 Q And these essentially, with respect to the 10Q forms, are  
5 essentially informing the world, so to speak, that public  
6 company's numbers or earnings, yes?

7 A Yes.

8 Q And also with respect to the 10K, similarly, but that's  
9 their annual earnings, their annual numbers, how they did that  
10 year?

11 A Yes.

12 Q And so would you also agree with me, Mr. Carocci, that  
13 publically-traded companies also inform us as to when they are  
14 going to announce their earnings?

15 A Yes, that's public knowledge, when you go on a financial  
16 website and find out the next time they are going to release  
17 earnings.

18 Q My question though is, is it common practice for each  
19 public company to announce publicly as to when they are  
20 actually going to announce their earnings each quarter?

21 A Yes.

22 Q Would you agree with me, Mr. Carocci, that there are  
23 traders, stock traders, that will essentially make trades with  
24 respect to those earnings announcements?

25 A You just mean the event?

CAROCCI - CROSS - MR. BRILL

1 Q Yes.

2 A Earnings announcement event, the public announcement by  
3 the company?

4 Q Yes.

5 A Yes.

6 Q Would you agree with me that the traders that do that,  
7 they are traders that essentially will make their stock trades  
8 on the day that the company announces their earnings or  
9 announces their numbers, would you agree with me with that?

10 A Yes. We're talking about -- you're talking about before  
11 they announce their numbers on that day?

12 Q Yes.

13 A So speculative before the earnings they are making a  
14 trade?

15 Q Correct.

16 A Yes.

17 Q Would you agree that for some traders that's a stock  
18 trading strategy?

19 A Yes.

20 Q Which means that for particular stock traders they will  
21 research a certain stock, yes?

22 A Yes.

23 Q They will read what an analyst has to say about that  
24 particular stock or that particular company?

25 A They could, yes.

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1 Q And with respect to the actual trade, the execution of  
2 their trade, they will do it very close in time to when the  
3 company announces their earnings?

4 A Close in time, you mean -- I mean, they can do it the day  
5 before the, day of, five hours before. Close in time, I'm  
6 not --

7 THE COURT: You mean before the earnings are  
8 announced?

9 Q Before the earnings are announced.

10 A Close in time before the earnings are announced, yes.

11 Q Would you agree it's also common practice amongst these  
12 types of traders they will do it very close in time to be when  
13 the earnings are announced.

14 For example, if a company is going to announce after  
15 market, which is after 4:00 p.m., that the stock trader that  
16 is trading based on what they anticipate earnings to be that  
17 trade would be placed as close to four as they can get it?

18 A I wouldn't know about that. Every trader would have  
19 their own strategy. I would imagine if they thought that the  
20 stock was trading at a level they liked in the morning or the  
21 day before, they would execute it then.

22 But as far as what I think what you're trying to  
23 say, the market is open for trading in that stock up until  
24 it's not. So they can do it as close to the close of trading  
25 as possible. But I don't know when you're saying that's a

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1 strategy or a factor, I don't know that. That's an individual  
2 trader.

3 Q But would you agree, if you know based on your knowledge,  
4 that that would be a trading strategy for some stock traders  
5 who are trading with respect to the earnings announcement?

6 A I imagine, but I have no personal knowledge of that  
7 trading strategy.

8 Q Would you agree, Mr. Carocci, that on the day a company  
9 announces earnings, that the closer that you get to that time  
10 that they announce earnings, all of the news that's out with  
11 respect to that company is already out. In other words, by  
12 the time you place that trade you can place that trade not  
13 worrying about what else is coming from the news before the  
14 earnings. I could rephrase that if you would like.

15 MR. GOPSTEIN: Objection to form.

16 THE COURT: Yes, please.

17 Q If you place a trade closer to 4:00 o'clock, if a company  
18 is announcing earnings after 4:00 o'clock, then at that point  
19 the only news left for that company is the earnings, would you  
20 agree with that statement?

21 A I mean I would -- I guess I would agree that there is  
22 news and information out there about the company all day long?

23 Q Yes.

24 A Then there is the earnings announcement. So yes, I  
25 guess.

CAROCCI - CROSS - MR. BRILL

1 Q If some stock trader was placing their trade based on  
2 what they anticipated the earnings to be and they were solely  
3 interested only in what those earnings were, the closer you  
4 got to the earnings announcement that is the optimal time for  
5 that trader to place that trade, would you agree with me?

6 A I don't necessarily know that whatsoever. A lot of  
7 factors would come into play. That may not be the optimal  
8 time, the stock could have been trading a lower price.

9 Let's say you want to buy the stock, it could have  
10 been at lower price the day before, a lower price the morning  
11 of. So that if you're looking to buy because you think a  
12 stock is going to go up, buy low, sell high. You think it's  
13 going to up, you're saying optimal, the optimal could have  
14 been a day before, two days before, the morning. If you're  
15 talking about a low price to buy low, sell high. The opposite  
16 for short a price decrease.

17 I can't agree that optimal time would be then. I  
18 don't think, I don't think you can say that as a blanket  
19 statement whatsoever.

20 Q If you are, Mr. Carocci, an earnings trader basing your  
21 trade solely on what that company will announce as its  
22 earnings, do you not agree that the best time to place that  
23 trade is right before the earnings are announced, that's the  
24 question?

25 A I guess I don't. Because the way I understand the

CAROCCI - CROSS - MR. BRILL

1 question is, I mean, this person trading on earnings has to  
2 have something in their mind whether they feel the stock is  
3 going to be, the earnings announcement is going to be  
4 beneficial to the stock price or detrimental to the stock  
5 price. They have to have some type in their mind when they are  
6 making a trade to execute some type of strategy. I don't know  
7 how this is related to this optimal time to a few minutes  
8 before. I just don't get that.

9 Because if, like I said, if you wanted to buy the  
10 stock, you want to buy as low as possible, that stock price  
11 could be low, lower the day before, could be lower five hours  
12 before, surely one hour before.

13 Q How about ten minutes before?

14 A Anything is possible. But to say ten minutes is always  
15 the optimal time for it, I don't think you can say that. I  
16 don't know how can you say that.

17 THE COURT: Excuse me, whether it's optimal or not,  
18 as you're describing that, if you trade close to the point at  
19 which the earnings are announced you are less vulnerable to  
20 other outside forces news and so forth effecting the price of  
21 the stock, fair enough?

22 THE WITNESS: That's correct, your Honor.

23 Q Would it be fair to say if you are a trader that is  
24 solely interested or solely anticipating what those earnings  
25 will be, then you want to be in a position where you are less

CAROCCI - CROSS - MR. BRILL

1 vulnerable to any other news outside of that earnings?

2 A Okay, that would make sense, yes.

3 Q Mr. Carocci, in terms of activity or volume in a  
4 particular stock, would you agree with me that on the day a  
5 stock is to announce its earnings, that there is an increase  
6 in stock trading activity for that company?

7 A I would say it's been my experience that that's usually  
8 the case; but I wouldn't say it's always the case. In my 18  
9 years of experience, that is usually the case.

10 Q And by us saying increase activity, would it be fair to  
11 say there is an increase in volume, which means the number of  
12 shares trading and bought and sold on that day?

13 A That's what I thought you meant by the previous question.

14 Q Yes, I wanted to make it crystal clear for everyone.

15 A Yes.

16 Q Would you agree, Mr. Carocci, based on what you said  
17 which is based on your knowledge, that is it a fair assumption  
18 that the reason for that is because those traders are  
19 essentially anticipating the earnings in someway?

20 A I think it would be a fair assumption that at least part  
21 of that increased trading volume you're discussing would be  
22 related to earnings announcement in anticipation.

23 Q Thank you. In other words, it's not a coincidence there  
24 is increased activity or increased volume of trading the day a  
25 company is announcing earnings, right?

CAROCCI - CROSS - MR. BRILL

1 A Correct.

2 Q Now, we touched upon this, Mr. Carocci, but in terms  
3 of -- we talked briefly about research. I think you were  
4 asked a question about research, do you remember that?

5 A Vaguely, I don't remember the specific question.

6 Q It may have been one question. My question is, would you  
7 agree with me that there are several research tools for a  
8 stock trader to use out there?

9 A Yes.

10 Q And for example one of them is Zacks.com?

11 A I've heard of it. I've never gotten on it.

12 Q I never asked if you had gotten on it, but you've heard  
13 of Zacks.com?

14 A I've heard of it, yes.

15 Q Would you agree it's a popular research tool amongst  
16 stock traders?

17 A I wouldn't know that.

18 Q It has, Zacks.com has what is called rating system for  
19 how the analysts who work for Zacks anticipate or predict  
20 earnings for a company, are you familiar?

21 A I use Bloomberg. I don't use Zacks. I'm not familiar  
22 with Zacks.

23 Q I'm not talking what you use -- let me finish the  
24 question. As someone who is has been declared an opinion  
25 witness here, who worked for FINRA for 18 years, that's who



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1 I'm asking, do you have knowledge of Zacks based on your 18  
2 years experience?

3 A I'm telling you I have knowledge that it exists, but  
4 other than that I do not use it. I use other financial  
5 websites. I use Bloomberg mainly, almost exclusively.  
6 Sometimes I'll use Reuters Thompson, even Yahoo Finance if I'm  
7 looking for certain things. That's just not what I use. I'm  
8 not familiar at all with its layout or anything like that or  
9 content, quite frankly.

10 Q Okay, but given that you don't use it, are you able to  
11 testify that it's a popular tool that other traders use?

12 A I wouldn't know what other traders use. As a regulator I  
13 use Bloomberg. I know other traders use Bloomberg.

14 Q Same question, Mr. Carocci, with respect to Briefing.com  
15 as a research tool?

16 A I have not.

17 Q How about Yahoo Finance?

18 A Yes, I've heard of that.

19 Q And would you -- is it fair to say that Yahoo Finance is  
20 a popular research tool among individuals who trade stocks?

21 A I don't have anything to base -- I use Yahoo, I don't  
22 have anything to base -- you're asking popular, how many  
23 people log on and use it? I have no idea of that number  
24 whatsoever.

25 Q I'm not asking numbers. Just in general, being in the

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1 field how long you have been, would you consider the use of  
2 Yahoo Finance for stock traders as something that is commonly  
3 done, that's popular?

4 A Yes, it's common I would say.

5 Q Mr. Carocci, are you familiar with what an earnings  
6 surprise is?

7 A As I would define it, it's something that is basically  
8 not in line with the guidance, what the company put out as  
9 guidance, or what the consensus of the analysts was. So it  
10 could be positive or negative surprise, positive you think a  
11 surprise positive it's not in line with the guidance is how I  
12 would understand it.

13 Q In other words, that there is public knowledge as to what  
14 a stock is supposed, or what a company, is supposed to  
15 announce or what their earnings are supposed to be and the  
16 actual announcement comes out the opposite way, or is a  
17 surprise based on what was predicated; is that fair?

18 A Yes.

19 Q Would you agree with me that if someone possessed that  
20 information ahead of time, before the public, that their  
21 trades would be consistent with that surprise?

22 THE COURT: What is that information?

23 Q The information that there is an earnings surprise, the  
24 earnings are different from how it was predicated.

25 A Can you repeat the question? I'm sorry.

CAROCCI - CROSS - MR. BRILL

1 Q Sure. Would you agree if someone had that information,  
2 the fact there was a surprise in earnings before the public,  
3 that they essentially, if they wanted to place a trade, would  
4 place a trade based on that earnings surprise having the  
5 non-public information ahead of time?

6 A Just that it was a surprise or, I mean, to execute a  
7 strategy you probably want to know if it's a positive or  
8 negative surprise, right. But as far as like what you're  
9 saying, yes, if they knew about that prior, yes, there would  
10 be a type of strategy that they might try to execute.

11 Q To be more clear, their trade would be consistent with  
12 what that earnings surprise was, negative or positive?

13 A Right, that's correct.

14 Q Mr. Carocci, you had told us on your direct testimony  
15 when you were asked by the Government about the return the S&P  
16 500 return in 2011, do you remember that question?

17 A Yes.

18 Q You told all of us that essentially the rate of return  
19 for the for all 500 stocks on average in the S&P was  
20 2.1 percent in 2011, is that your testimony?

21 A That was the Index return. I did the Index when I looked  
22 it up.

23 Q Were you asked just to do 2011?

24 A Yes.

25 Q Well, are you aware that in 2012 it was 16 percent?

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1 A No. For my preparation for my testimony today I just  
2 looked at 2011.

3 Q Okay. That's because the Government told you to look at  
4 2011 only?

5 A They asked me if I could get that information.

6 Q Okay. How about -- so I guess they didn't ask you to  
7 look at 2013, which was a 32 percent return?

8 A I wasn't asked to get that information.

9 Q How about 2014, which is a 16 percent return. You  
10 weren't asked to do that?

11 A Correct.

12 THE COURT: Do you know that to be the case?

13 THE WITNESS: Those numbers sound accurate to me.  
14 But again, I didn't specifically look that number up before I  
15 came here today. I have no reason to doubt.

16 Q You weren't asked to do that?

17 A Correct.

18 Q Mr. Carocci, back to the 2011, which you did testify  
19 about which was 2.1 percent, would you agree with me that  
20 there are let's say mutual funds in 2011 that beat that  
21 number, that beat the S&P 500 Index?

22 A Yes.

23 Q Mutual funds?

24 A Yes.

25 Q Hedge funds, same thing, there are hedge funds that after

CAROCCI - CROSS - MR. BRILL

1 the year was up their rate of return was higher than  
2 2.1 percent than the S&P 500 Index?

3 A Some hedge funds would be, some would not, same as mutual  
4 funds depending on investment strategy, depending how  
5 successful it was for 2011.

6 Q My question is, there were some that would beat it?

7 A Yes.

8 Q And would it be fair to say there were some that would  
9 beat it by a lot?

10 A Off the top of my head I don't know that, but it's  
11 possible.

12 Q Would the same apply, Mr. Carocci, to an individual  
13 trader that's trading throughout the year then takes a final  
14 tally at the end of the year? Would you agree with me that an  
15 individual stock trader could very well beat the S&P 500 Index  
16 at the end of 2011?

17 A Yes.

18 Q Would you agree that that particular individual trader  
19 could beat the S&P 500 Index by a lot?

20 A It's certainly possible.

21 Q That's just one index, you've testified just to a rate of  
22 return on one particular index in 2011, yes?

23 A On direct, yes.

24 Q The question, Mr. Carocci, I think you did mention on  
25 direct about brokerage companies. I'm sorry, we heard a lot

CAROCCI - CROSS - MR. BRILL

1 of things, I don't know if you mentioned E-Trade or brokerage  
2 companies where you can conduct trades like E-Trade or Schwab  
3 or TD Ameritrade?

4 A FINRA member firms, we call them brokerage firms.

5 Q Would you agree with me that each time if you're a  
6 customer of those companies, that each time you conduct a  
7 trade with those companies, there would be a record of it?

8 A Correct.

9 Q So if I'm a Schwab customer and I want to place a trade  
10 on Apple, and I can do it online, I place a trade with Apple,  
11 that transaction the details of that will be recorded by  
12 Schwab?

13 A Yes.

14 Q Now, would you agree with me, Mr. Carocci, that if I did  
15 that exact same thing but I was in Switzerland when I logged  
16 into my Schwab account and placed that exact same trade in  
17 Apple with Schwab, wouldn't you agree that Schwab would also  
18 have a record of that trade?

19 A If it was executed through Schwab, Schwab should have a  
20 record of trade.

21 Q No matter where I am, if I'm in Brooklyn?

22 A Yes.

23 Q Or Switzerland?

24 A Yes.

25 Q Or Canada, as long as I execute within those companies

CAROCCI - CROSS - MR. BRILL

1 they are going to have a record of those trades, wouldn't you  
2 agree?

3 A They should have the record of those trades.

4 Q You were asked on direct testimony, Mr. Carocci, about  
5 Government's Exhibit 815. You were asked questions about 815  
6 this morning, which was Mr. Korchevsky's CRD report do you  
7 remember those questions?

8 A Yes.

9 Q You saw in there Mr. Korchevsky's employment history,  
10 yes?

11 A Yes.

12 Q Now, question for you Mr. Carocci, in reviewing this CRD  
13 report basically up to 2008, there was no FINRA suspensions  
14 that you saw in the CRD, right?

15 A Reviewing the CRD up until 2008?

16 Q Yes.

17 A Yes, correct.

18 Q There are no -- you mentioned barring, Mr. Korchevsky  
19 wasn't barred from trading, nothing reflected in this report,  
20 right?

21 A Correct.

22 Q If one trades on their own, Mr. Carocci, meaning if  
23 someone essentially is not employed by anyone and for  
24 themselves wants to trade, do they need to register through  
25 FINRA?

CAROCCI - CROSS - MS. WHALEN

1 A Not if they are trading for their own account, their own  
2 money, no. The registration only applies if you're doing it  
3 for others, for compensation, that's where the registration  
4 applies. No, any individual can set up an E-Trade or TD  
5 Ameritrade account on their own. You don't need to be  
6 registered to trade your own money in your own brokerage  
7 account.

8 MR. BRILL: Your Honor, may I have one moment?

9 THE COURT: Yes, sure.

10 MR. BRILL: Nothing further.

11 THE COURT: Thank you. Ms. Whalen?

12 MS. WHALEN: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MS. WHALEN: :

15 Q Good afternoon, Mr. Carocci.

16 A Good afternoon.

17 Q We are heading into new waters.

18 A Okay.

19 Q On your direct testimony you talked about trading  
20 authorization forms?

21 A Correct, yes.

22 Q And the brokerage firms keep the trading authorization  
23 forms as a record of who is signing up for the account, who  
24 the account belongs to, that kind of information, correct?

25 A Who has trading authorization in the account, it's really



CAROCCI - CROSS - MS. WHALEN

1 not dissimilar to a bank account. You set up a bank account,  
2 you need to know who can make withdrawals from the account.

3 MS. WHALEN:

4 MS. WHALEN: Ms. Mulqueen, the witness only.

5 COURTROOM DEPUTY: Witness only, okay.

6 Q I'm showing you what is marked for identification as  
7 Government's Exhibit 1008-2, do you recognize what this  
8 document is?

9 A First time I've seen it. Looks like TD Ameritrade  
10 business account application.

11 Q I'm not suggesting that you have any experience with this  
12 document, but this is the kind of document that you would  
13 recognize as a trading authorization form?

14 A It's an account opening document. That's where I would  
15 recognize it as.

16 Q Would there be a separate trading authorization document?

17 A I mean, it should be, it could be separate but it should  
18 be related to this form, or on this form there should be a  
19 section that gives the trading authorization.

20 MS. WHALEN: Your Honor, I'd like to move this  
21 document into evidence as part of a stipulation that will be  
22 introduced later. And I would just publish it subject to  
23 connection later on.

24 MR. GOPSTEIN: No objection.

25 THE COURT: 1008-2 received subject to connection.

CAROCCI - CROSS - MS. WHALEN

1 (Government Exhibit 1008-2, was received in  
2 evidence.)

3 Q I'm going to turn to page three of the document. I'm  
4 going to show you section nine, you see margin account is  
5 checked?

6 A Yes.

7 Q And then I would ask you to look at the provision  
8 underneath, it's the financial information, subsection ten?

9 A Yes.

10 Q I'm showing you the last sentence in this which reads,  
11 Selling short can expose you to potentially unlimited risk.  
12 To learn more about the potential benefits of margin borrowing  
13 and the associated risks involved, read the margin account  
14 handbook.

15 Mr. Carocci, what is a margin account?

16 A An account that allows the account holder to effectively  
17 borrow money from the brokerage firm to make investments,  
18 investments in stocks options, allows to you borrow money.  
19 Not every brokerage accounts are like that, some are margin  
20 accounts.

21 Q That means if you only have \$100 deposited but you have a  
22 margin account, you can borrow and trade with more than \$100,  
23 correct?

24 A Correct, you can borrow, they can lend you money to make  
25 trades, then whatever you buy will be collateral for the

CAROCCI - CROSS - MS. WHALEN

1 money.

2 Q This is a warning because that can be risky in some  
3 circumstances, correct?

4 A Yes, because you're trading with borrowed money.

5 Q Right. And so if you make a mistake in your borrowing,  
6 you could lose a lot of money and in this case owe Ameritrade  
7 a lot of money?

8 A Right. Technically they would have the stock as  
9 collateral; but yes, you could lose money and a lot of money,  
10 yes.

11 Q They actually give you a warning as part of this  
12 financial information, correct?

13 A I call that a warning, yes.

14 Q Going to page four, this is going to be, this is the  
15 account agreement, paragraph 13. As part of paragraph 13 I'm  
16 going to zoom down, there is a section that says, When you  
17 open an account we will ask you your name, address, date of  
18 birth, and other information. We may also use third-party  
19 information verification and ask you for a copy of your  
20 driver's license and other identifying documents. Correct?

21 A Yes.

22 Q That means that they could ask for, as they say, your  
23 driver's license just to confirm identity, correct?

24 A Yes.

25 Q Now, I think Mr. Brill just talked to you about, there

CAROCCI - CROSS - MS. WHALEN

1 are different ways to trade on the stock market. You can use  
2 a brokerage firm or you could trade on your own, correct?

3 A You have to, you have to have a brokerage account, not a  
4 brokerage firm. You could do it yourself as far as make your  
5 own decisions, but you could also use a broker to make  
6 recommendations or help you through the process or walk you  
7 through things. So but you need a brokerage account.

8 Q Right, I'm sorry, you need something like a TD Ameritrade  
9 to physically make the trades, correct?

10 A Correct.

11 Q Some people do it on their own and some people under the  
12 advice of a broker?

13 A Yes.

14 Q Brokers are paid for their work; isn't that correct?

15 A Yes.

16 Q They can be paid per activity, like they could be paid  
17 for every purchase and they could be paid for every sale of  
18 stock, correct?

19 A They can.

20 Q They can also receive a commission on the purchase and  
21 sale of stock, correct?

22 A Yes.

23 Q And that commission could be a percentage of the profits,  
24 if there were profits on that sale, correct, or purchase?

25 A Right, yes.

CAROCCI - CROSS - MS. WHALEN

1 Q The percentage, if someone was acting on that kind of a  
2 commission basis earning, getting paid for profits, the  
3 percentage of the profit could vary, correct?

4 A I'm confused now.

5 Q I didn't mean to confuse you.

6 A You're talking about commissions for executing a trade;  
7 some are flat fees, some are percentage of the trade.

8 Q Okay. And if someone was operating on a percentage  
9 basis, the percentage could vary; isn't that correct?

10 A It can vary. But under FINRA rules it has to be  
11 reasonable for the stock. Basically reasonableness is  
12 determined how liquid the stock is and that type of stuff.

13 Q Okay. There are brokerage firms that have -- let's use  
14 Merrill Lynch for example. Merrill Lynch has an online  
15 platform where can you trade on your own, correct?

16 A Yes.

17 Q And they also have traders who work for them for Merrill  
18 Lynch, correct?

19 A Yes.

20 Q The fee relationship between the traders and Merrill  
21 Lynch would be established by that company, correct?

22 A Correct.

23 Q Maybe they have a sort of a base salary, then sort of  
24 commission rate on top of that, correct?

25 A Correct. I'm not familiar what Merrill Lynch does, but

CAROCCI - CROSS - MS. WHALEN

1 something to that effect.

2 Q I'm using Merrill Lynch as an example in name. I saw it  
3 on an advertisement, not using them for a particular example.

4 Then you were asked on your direct testimony about  
5 the settlement of securities transactions, do you remember  
6 that?

7 A Yes.

8 Q Settlement is the last step in the securities  
9 transaction, correct?

10 A Yes.

11 Q The first step is the execution of the trade, correct?

12 A An order to buy or sell then the execution, then  
13 settlement.

14 Q So first I would place my order, correct, then if I'm  
15 using Merrill Lynch they would execute that order, correct?

16 A Correct.

17 Q Then the next step would be clearing, correct?

18 A Yes.

19 Q What is clearing?

20 A Well, it's basically making sure that the stock that's  
21 let's say sold, gets to the right account, and that the money  
22 to pay for that stock or the proceeds from a stock sale get to  
23 the right accounts.

24 Q I think you mentioned on your direct testimony that the  
25 DTCC --

CAROCCI - CROSS - MS. WHALEN

1 A Yes.

2 Q -- that's the depository trust company?

3 A Clearing Corporation.

4 Q Clearing Corporation, okay. A subsidiary of the DTCC is  
5 the National Securities Clearing Corporation, correct?

6 A Yes.

7 Q And if I can just call it the NECC for short. The NECC  
8 provides clearing and settlement of securities transactions,  
9 correct?

10 A Yes.

11 Q That's actually located in Manhattan, correct? I could  
12 show you something to refresh your recollection.

13 A Off the top of my head I can't recall where they are  
14 located, I'm sorry.

15 This looks like from their website, National  
16 Security Clearing Corporation. They have a contact address of  
17 55 Water Street, New York, New York. I don't know if that's  
18 their headquarters.

19 Q So you don't know.

20 A That's an address on a website.

21 Q So you have no personal knowledge as to where the NECC  
22 clears trades, correct?

23 A I don't know their physical location.

24 (Continued on next page.)

25

CAROCCI - CROSS - MS. WHALEN

1 Q So then I'm going to show you --

2 MS. WHALEN: And this is for everyone, Ms. Mulqueen.

3 Q I'm going to show you what's been previously marked as  
4 Government's Exhibit 814. And this is the CRD report from --  
5 for -- this is the CRD report, correct?

6 A Yes.

7 Q Okay. And Government Exhibit 814 is actually for -- I'm  
8 turning to page 3 -- it's actually for Mr. Khalupsky, correct?

9 A Yes.

10 Q FINRA registration, you are registered if you are  
11 employed by a Wall Street firm?

12 A Yes.

13 Q And you requested this report on April 18th of 2018?

14 A Yes.

15 Q Okay. And it lists, Mr. Khalupsky's state of residence  
16 as New York; is that correct?

17 A Yes.

18 Q Now, that state of residence, is that the state of  
19 residence at the time of the filing of the report -- the  
20 individual who is filing their forms with FINRA?

21 A Right. So it would have been what's called a Form U4,  
22 which would have been filed by Mr. Khalupsky and the firm he  
23 was currently with, notifying us that that was his state of  
24 residence at that time, and if that changes from the time  
25 someone becomes registered or the time if they file that Form



CAROCCI - CROSS - MS. WHALEN

1 U4, they are required to amend the Form U4 to let us know that  
2 it had changes and then it would show up in this -- the  
3 amendment would show up in this -- in this report.

4 Q Okay. So at this point, just going further down on  
5 page 3, so it says, "There are no registrations with the  
6 current employer found for this individual," correct?

7 A Yes.

8 Q Okay. And that means -- that could mean many things;  
9 isn't that correct?

10 A No. I mean, I think, you know, if -- it basically means  
11 that the current person is not currently registered.

12 Q Okay. So he's no longer registered with FINRA; is that  
13 correct?

14 A Correct.

15 Q Okay. And that could be -- maybe I should rephrase it.

16 That could be the result of a number of things,  
17 correct? He could no longer be working in the securities  
18 industry, correct?

19 A Correct.

20 Q Or he could have left the United States and no longer be  
21 working in the United States, correct?

22 A Correct.

23 Q And no longer be working with a Wall Street firm,  
24 correct?

25 A Correct, yeah.

CAROCCI - CROSS - MS. WHALEN

1 Q Okay. I'd like to draw your attention, then, to the  
2 registrations with previous employers.

3 So it indicates that he was registered from July 28,  
4 2010, to June 15, 2011, with WTS Proprietary Trading  
5 Corporation, correct?

6 A Yes.

7 Q And before that, I think you mentioned he was with  
8 Dimension Brokerage from September 13th, 2007, to August 1st,  
9 2008?

10 A Yes.

11 Q I would like to draw your attention to, then, page 5,  
12 because just looking at page 5, that top line of employment  
13 history --

14 A Right.

15 Q -- it says from September 2007 to the present at  
16 Dimension Brokerage.

17 A Right.

18 Q But previously on the other page, it showed him working  
19 for Dimension Brokerage until 2008.

20 A Well -- right. So you have -- what that section is, in  
21 the database, is the history. So it stops, you know, before  
22 its last -- the last employer.

23 Q Okay.

24 A You see what I'm saying? So -- so that's, kind of,  
25 history. The section you read from before was registration

CAROCCI - CROSS - MS. WHALEN

1 with previous employers. This section is employment history,  
2 and so it's just the way the database is. That employment  
3 history cuts off there, and the last one that they're with is  
4 in the front. It gives the dates.

5 Q Okay.

6 A And that's why it just says "present," because it's just  
7 the way the database is set up.

8 Q Okay. But so it doesn't mean that he's still working  
9 there, correct?

10 A No. It's a history. It's the historical part of the  
11 database. It's not the -- if he was still employed, it would  
12 have been the current. If he was still employed, it would  
13 have been the current part of the database, which is that  
14 first page you read, page 3.

15 Q Okay.

16 And then I'd like to show you page 6, and looking  
17 down at -- it says, "Office of employment history, July 2010  
18 to June 2011." It gives WTS Proprietary Trading Group. And  
19 then it says, "type of office," and it says, "supervised  
20 from."

21 What does that mean?

22 A Well, this is the office that he should have been  
23 supervised from.

24 Q Okay. And just looking below --

25 A And this information would have been, again, provided by

CAROCCI - CROSS - MS. WHALEN

1 Mr. Khalupsky and the firm to FINRA.

2 Q Okay. Great.

3 And then just looking below at the type of office,  
4 because in his employment with -- from 2000 -- July 2010 to  
5 August 2010, they're saying "located at."

6 Is that just a --

7 A Your question?

8 Q Yeah. I guess, what's the difference between the one  
9 that says "supervised from" and the other one that says  
10 "located at"?

11 A Well, the "located at" should have been his office of  
12 employment where he shows up most of the time. You know, not  
13 necessarily every day, but his main office.

14 I think the "supervised from," that's the office he  
15 supervised from.

16 Q Okay.

17 And this is not the -- it says at the top of this  
18 section, it says, "office of employment history," and  
19 that's -- that's not the history of the office, because I  
20 think the office address changes between -- as of June -- as  
21 of the July 2010, it says 17 State Street, 39th floor, but  
22 previously, the same employer from August 2010 to August 2010  
23 is at 11 Broadway, Suite -- 11 Broadway, Suite 1515.

24 So, I guess, is this where Mr. Khalupsky should be  
25 reporting, or is this just a history of where the offices are

CAROCCI - CROSS - MS. WHALEN

1 located?

2 A It should be where -- he's located at the 11 Broadway,  
3 that should be his office, and then -- but it's saying,  
4 "supervised -- supervised from 17 State Street."

5 So, you know, this is his office of employment  
6 history. Again, this would have been provided by the firm.  
7 You're saying he's at this office and he's supervised from  
8 this office.

9 Q Okay.

10 A Now, if you're asking did WTS Proprietary Trading change  
11 offices in that time, I would have to look at the -- at their  
12 CRD to see if they had office changes.

13 Q Okay.

14 A But I don't have to do that. I don't have that  
15 information.

16 Q Okay. But this says "supervised from," so you have no  
17 information as to whether he was at the 17 State Street office  
18 or whether he was working remotely or how he was reporting to  
19 the office; is that correct?

20 A Well, it says, "private residence, no" -- yeah, that's  
21 correct. That's correct.

22 Q So he could be reporting to the office or he could be  
23 reporting in remotely, correct?

24 A Correct.

25 Q And then one more. I'm just taking you to page 9 of the

CAROCCI - CROSS - MS. WHALEN

1 report. The top line -- not the very top line, but the top of  
2 the previous CE requirement status, he's listed -- just to  
3 back up, CE stands for continuing education?

4 A Yes.

5 Q Continuing education inactive as -- it appears to be as  
6 of September 30th, 2008, correct?

7 A Yes.

8 Q That would be an indication that he was no longer an  
9 active registered broker, correct?

10 A That's correct. I think it ended a month earlier in  
11 August.

12 Q Okay.

13 MS. WHALEN: Just a moment.

14 (Short pause.)

15 Q Sorry, I think I -- I obviously misstated something.

16 The state of residence, just again, that was at the  
17 time of his registration, you have no information as to  
18 whether or not that's currently his residence, correct?

19 A I have no -- no knowledge of his current residence. That  
20 is as of the last time he notified FINRA.

21 Q Okay.

22 And that appears -- the last registration probably  
23 would have been in July of 2010?

24 A Let me see here. It should be -- let me see in the back.  
25 There might be something that tells us.

CAROCCI - REDIRECT - MR. GOPSTEIN

1 (Short pause.)

2 A Yeah, it looks like -- if you go to page 9, there's a  
3 filing history, and if you look -- it looks like on  
4 August 16th of 2010, there was a Form U4 filed for WTS  
5 Proprietary Trading Group, so that -- it would have been on  
6 that form, because there's no -- I don't see an amended form  
7 after that --

8 Q Okay.

9 A -- amended Form 4 after that, so that should have been on  
10 that form, and that's how that information would have gotten  
11 into our database and you would see it where it's located.

12 MS. WHALEN: I think that's it. Thank you. No  
13 further questions.

14 THE WITNESS: Thank you.

15 THE COURT: Anything further?

16 MR. GOPSTEIN: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. GOPSTEIN:

19 Q Good afternoon again.

20 A Good afternoon.

21 Q You were asked a number of questions on cross-examination  
22 about earnings surprises.

23 Do you recall that?

24 A Yes.

25 Q You were asked about how you might consider an earnings

CAROCCI - REDIRECT - MR. GOPSTEIN

1 surprise if you were in possession of a earnings press release  
2 before it was published.

3 Do you recall that?

4 A Yes.

5 Q And would you agree, Mr. Carocci, that there are  
6 different kinds of earnings surprises?

7 A Yes.

8 Q So if you have a positive earnings surprise, it's meeting  
9 the estimate, and if you have a negative surprise, it's not  
10 meeting the estimate?

11 A Yes.

12 Q And you can have a really big earnings surprise of  
13 beating the estimate by \$10, and you can probably have a  
14 smaller surprise of beating the earnings by a cent; is that  
15 fair?

16 A Yes.

17 Q And if you were in possession of a press release, is one  
18 of the things you would consider the size of the earnings  
19 surprise?

20 A Yes. If you were in possession of a press release.

21 Q If you were in possession of an earnings press release,  
22 would you also consider the information in addition to the  
23 earnings numbers that are contained in that earnings press  
24 release when deciding how to trade?

25 A Yes. I imagine you can read the whole press release and



CAROCCI - REDIRECT - MR. GOPSTEIN

1 see what other information is in there.

2 Q So if you had an earnings press release that showed an  
3 earnings surprise that a company, for example, beat earnings  
4 predictions by one cent, but also in that press release it  
5 announced it was firing its CEO and discontinuing its product,  
6 would you consider that information when deciding how to  
7 trade?

8 A Sure. I mean, there's -- earnings, again, is just one --  
9 one component. I mean, you know, Ford could have an earnings  
10 surprise, but they could also disclose that they have to  
11 recall a million vehicles. That's a problem, okay, because  
12 one is saying for the past quarter, we beat expectations,  
13 let's say, for example, we made more money than we thought,  
14 but, you know, the government just told us we had to recall a  
15 bunch of cars. There's going to be a cost to that in fixing  
16 them, so, you know, what's more important? That's up to the  
17 individual trader to evaluate and decide. I couldn't tell  
18 you, I'm not an expert of Ford, but that's something that an  
19 individual trader would have to decide. What's more  
20 important, that they beat earnings expectations or they have  
21 to recall five million vehicles?

22 Q And having all of that information before it's public,  
23 that's the informational advantage you testified to on direct?

24 A Correct. That's the informational advantage that  
25 regulation FD is supposed to prevent from happening.

CAROCCI - REDIRECT - MR. GOPSTEIN

1 MR. GOPSTEIN: No further questions.

2 THE COURT: Anything else?

3 MR. BRILL: No. No questions.

4 THE COURT: Thank you, sir. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 (Witness steps down.)

7 THE COURT: Next witness, please.

8 MS. NESTOR: The government calls Arkadiy Dubovoy.

9 THE COURTROOM DEPUTY: Good afternoon, sir. I'm  
10 going to ask you to, please, take the stand.

11 THE COURT: The witness will be testifying with the  
12 assistance of a Russian interpreter.

13 Ms. Mulqueen, please swear the interpreter.

14 THE COURTROOM DEPUTY: Sir, I'm going to ask you to  
15 raise your right hand.

16 (Interpreter sworn.)

17 THE INTERPRETER: Yes.

18 THE COURTROOM DEPUTY: Thank you.

19 May we have your name for the record, please.

20 THE INTERPRETER: Andrew Harkuscha,  
21 H-A-R-K-U-S-C-H-A.

22 THE COURTROOM DEPUTY: Thank you.

23 Sir, I'm going to ask you to stand and raise your  
24 right hand.

25 (Witness takes the witness stand.)

DUBOVOY - DIRECT - MS. NESTOR

1 ARKADIY DUBOVOY, called as a witness, having been first duly  
2 sworn/affirmed, was examined and testified as follows:

3 follows:

4 THE WITNESS: Yes, so help me God.

5 THE COURTROOM DEPUTY: Thank you. Please have a  
6 seat.

7 State and spell your name for the record.

8 THE WITNESS: Arkadiy Dubovoy, A-R-K-A-D-I-Y  
9 D-U-B-O-V-O-Y.

10 MS. NESTOR: Will the interpreter need a microphone?  
11 It's just a suggestion. If it's not necessary for the  
12 Court --

13 THE COURTROOM DEPUTY: Sure. We have a lapel -- we  
14 can use this.

15 (Short pause.)

16 THE COURTROOM DEPUTY: Okay. If this isn't working,  
17 I'm just going to ask you --

18 THE COURT: Just speak up. The witness is fine.  
19 We're talking about the interpreter.

20 THE INTERPRETER: Yes, I have a loud voice.

21 THE COURT: Good. We need a few loud voices around  
22 here.

23 Go ahead.

24 DIRECT EXAMINATION

25 BY MS. NESTOR:

DUBOVOY - DIRECT - MS. NESTOR

1 Q How old are you?

2 A Fifty-three.

3 Q Where were you born?

4 A Ukraine de Odessa Oblast region, Shevchenko.

5 Q Where did you grow up?

6 A In the Ukraine in the village of Shevchenko.

7 Q How far did you go in school?

8 A Technical school.

9 Q What technical education did you receive?

10 A Electrical.

11 Q Where do you live currently?

12 A Atlanta, Georgia.

13 Q And I should have asked, when you said you got an  
14 electrical education, does that mean you learned how to be an  
15 electrician?

16 A Yes.

17 Q So you currently live in Atlanta, Georgia.

18 A Yes.

19 Q When did you come to the United States?

20 A Twenty-five years ago.

21 Q Why did you move?

22 A I came here as a refugee.

23 Q A refugee from what?

24 A By way of a -- because I was a Christian.

25 Q What do you mean?

DUBOVOY - DIRECT - MS. NESTOR

1 A Back -- back then, in our -- in our territories, there  
2 was suppression of religious believers.

3 Q Are you a citizen of the United States?

4 A No.

5 Q Why not?

6 A I -- I attempted to become one twice, but I was not able  
7 to handle the language part of the exam.

8 Q What language do you speak?

9 A Russian and Ukrainian.

10 Q Do you speak English?

11 A No. A little.

12 Q What have you been doing for a living in the last  
13 25 years?

14 A I am a businessman.

15 Q Have you run your own businesses?

16 A Yes.

17 Q Tell us about those businesses.

18 A I have a construction business.

19 Q What's that called?

20 A APD Custom Homes.

21 Q What else?

22 A I also have a ice cream factory.

23 Q You have them currently?

24 A Now, no.

25 Q You had it at one point?

DUBOVOY - DIRECT - MS. NESTOR

1 A Yes.

2 Q Where was the ice cream factory?

3 A In the Ukraine.

4 Q What else did you do for business?

5 A I also had a company back in the Ukraine that collected  
6 garbage.

7 Q What else?

8 A I sold clothes.

9 Q Where was that?

10 A In the Ukraine.

11 Q What else did you do in the United States?

12 A I had apartments.

13 Q What does that mean?

14 A I would rent out apartments.

15 Q Did you have any other construction businesses in the  
16 Ukraine?

17 A Yes. I had a business with partners.

18 Q What was that called?

19 A Atlanta Invest.

20 Q Currently, what are you doing?

21 A I just work.

22 Q Where do you work?

23 A Mission Cargo.

24 Q What does that do?

25 A It's a transportation company.

DUBOVOY - DIRECT - MS. NESTOR

1 Q What do you do for them?

2 A I am a worker there. I repair trucks.

3 Q I should have asked. When you first came to the United  
4 States, did you start out owning your own business?

5 THE INTERPRETER: I'm sorry, could you repeat it?

6 Q I should have asked. When you first came to the United  
7 States, did you start out owning your own business?

8 A No. I initially worked.

9 Q What did you do?

10 A I worked in -- at a glass factory.

11 Q Why are you here today?

12 A Because I broke the law.

13 Q Tell us what you did.

14 A Our group, we purchased -- we purchased information --  
15 information that we were able to receive before other people  
16 were able to receive that information, and then we purchased  
17 stocks on the market.

18 Q Based on that information?

19 A Yes.

20 Q Did you plead guilty to any crimes?

21 A Yes.

22 Q To what?

23 A That -- to what I did -- to which I did.

24 Q What was the crime you pled guilty to?

25 A That -- that we agreed to -- that we were involved in

DUBOVOY - DIRECT - MS. NESTOR

1 wire fraud.

2 Q A conspiracy to commit wire fraud?

3 A Yes.

4 Q Are you testifying here today as part of an agreement  
5 with the government?

6 A Yes.

7 Q Have you been sentenced yet?

8 A No.

9 Q Did you commit this crime with others?

10 A Yes.

11 Q Do you recognize anyone in the courtroom today who you  
12 committed these crimes with?

13 A Yes.

14 Q Can you please describe them by an article of clothing  
15 and a name? Well, who was it? We'll start there. Who was  
16 it?

17 A Khalupsky Vladimir and Vitaly Korchevsky.

18 Q Can you please identify Mr. Khalupsky?

19 A He's there at the edge of the table.

20 MS. NESTOR: Your Honor, the government asks that  
21 the record reflect that the witness has identified the  
22 defendant, Mr. Khalupsky.

23 THE COURT: Could you be more specific, sir?

24 THE WITNESS: He is there at the end of the table;  
25 white shirt, black suit.



DUBOVOY - DIRECT - MS. NESTOR

1 THE COURT: Okay. Indicating the defendant.

2 Q And how about Mr. Korchevsky? Could you please identify  
3 him?

4 A In the middle of the table, white shirt, black suit, gray  
5 tie.

6 THE COURT: Indicating Mr. Korchevsky.

7 MS. NESTOR: Thank you, Your Honor.

8 Q Can you briefly tell the jury what Mr. Korchevsky's role  
9 was in this crime?

10 A Korchevsky is a trader, and he traded on my accounts.

11 Q Based on what?

12 A Based on me giving him a code where he was able to access  
13 information with which he was able to buy stocks before anyone  
14 else was able to get that information.

15 Q What about Mr. Khalupsky? What was his role?

16 A Khalupsky did the same thing.

17 Q He was also trading in your accounts?

18 A Yes.

19 Q And based on the stolen information as well?

20 A Yes.

21 Q When was the last time you spoke to Korchevsky?

22 A Prior to my arrest -- three years ago.

23 Q What about Khalupsky?

24 A Same thing.

25 Q Can you tell us when you first met Vitaly Korchevsky?

DUBOVOY - DIRECT - MS. NESTOR

1 A That was in '99. '99, 2000 -- somewhere in '99.

2 Q How did you meet him?

3 A A friend called me that we have a pastor in our church  
4 and let me introduce you to him. You're a businessman, he  
5 works in a bank, and you may be of use to each other.

6 Q So you learned Mr. Korchevsky worked at a bank.

7 A That's how I recall it. It was a long time ago.

8 Q Did you meet Mr. Korchevsky?

9 A Yes.

10 Q What happened after you met him?

11 A We met up, we spoke to each other, we shared what each of  
12 us is involved in, what we do.

13 Q What happened next?

14 A He explained to me what the stock market was. I didn't  
15 know what it was.

16 Q What happened next?

17 A I opened an account, I deposit money to that account, and  
18 I let him trade on it.

19 Q I want to unpack that for a minute.

20 Whose idea was it for you to open up a brokerage  
21 account?

22 A Well, Vitaly described to me that -- what seemed to be a  
23 good opportunity and I opened an account.

24 Q What was the good opportunity?

25 A Buying stock.

DUBOVOY - DIRECT - MS. NESTOR

1 Q Had you invested in the stock market before?

2 A No.

3 Q Just to be clear, what were you doing at that time for  
4 work?

5 A Back then, I had a business.

6 Q What type of business?

7 A I built homes; I was involved with stucco plastering.

8 Q Why did you decide to let Korchevsky trade for you in  
9 your account?

10 A I -- I trusted him. He -- he's an honest person, a  
11 pastor.

12 Q How did the trading work?

13 A Vitaly traded, then -- then the crash occurred and I lost  
14 money and that's it.

15 Q To be clear, he wasn't trading on stolen information at  
16 this time?

17 A No.

18 Q Did you pay Mr. Korchevsky at this time?

19 A Yes.

20 Q Tell us what you paid.

21 A I don't remember now. This was a short period of time.

22 Q Was there an agreement that you recall?

23 A No. There was nothing.

24 Q What happened next?

25 A Well, since I -- well, since I lost money, I got somewhat

DUBOVOY - DIRECT - MS. NESTOR

1 upset at Korchevsky.

2 Q Let me ask you, during this time, did anyone else review  
3 Korchevsky's trades in your accounts?

4 A Near the -- in the last months, my accountant, Leonid  
5 Momotok, looked at it.

6 Q Leonid Momotok?

7 A Yes.

8 Q Who was Leonid Momotok?

9 A We attend the same church together.

10 Q I'm showing you what's already in evidence as  
11 Government's Exhibit 3.

12 Do you recognize who that is?

13 A Yes.

14 Q Who is that?

15 A Leonid Momotok.

16 Q So please explain to us why you let Mr. Momotok review  
17 your accounts during this time.

18 A Well, back then, he traded using his own money. That was  
19 for some period of time.

20 Q And why did you let him look at your accounts?

21 A I don't exactly -- I don't exactly recall anymore.  
22 Either we -- we spoke and -- and I gave him an opportunity to  
23 look at the accounts. I don't recall exactly.

24 Q Did you tell Mr. Korchevsky that he was reviewing your  
25 accounts?

DUBOVOY - DIRECT - MS. NESTOR

1 A That Leonid looked at them?

2 Q Yes.

3 A No.

4 Q Just to be clear, what was he doing after looking at the  
5 accounts?

6 A I don't know. He just looked at them. Maybe he did some  
7 analysis for himself. I don't know.

8 Q Did he pay you money as a result of looking at the  
9 accounts?

10 A No, of course not.

11 Q Why didn't you tell Mr. Korchevsky that Momotok was doing  
12 this?

13 A There was no need to tell him.

14 Q After Mr. Korchevsky stopped trading in your accounts,  
15 what was your relationship like with him?

16 A For a certain period of time, there was no relationship  
17 at all.

18 Q Was there a time when you started dealing with  
19 Mr. Korchevsky again?

20 A Yes.

21 Q When was that?

22 A That was in the year 2010 -- 2010.

23 Q Tell us what happened. And start from the beginning,  
24 please.

25 A My brother called me and said there's a program that we

DUBOVOY - DIRECT - MS. NESTOR

1 can work on the stock market with.

2 Q What did you do?

3 A I said, well, then, send it over to me -- to Garkusha  
4 or -- I don't know exactly who I mentioned.

5 Q What's your brother's name?

6 A Pavel.

7 Q Showing you what's already in evidence is Government  
8 Exhibit 4.

9 Who is that?

10 A That's Pavel.

11 Q Where did Pavel live at this time?

12 A In the Ukraine.

13 Q When Pavel first told you about the idea of something  
14 having to do with the stock market or stocks, what did you  
15 think about it?

16 A I thought it was nothing. I thought that nothing would  
17 come of this.

18 Q Why?

19 A Because Pavel had a lot of ideas that -- that came my  
20 way, but none of the ideas worked.

21 Q You said that you asked Pavel to send it to you or -- to  
22 send the information to you or Garkusha. Who is Garkusha?

23 A Garkusha is my partner in the construction company APD.

24 Q Showing you what's already in evidence as Government  
25 Exhibit 1.

DUBOVOY - DIRECT - MS. NESTOR

1 Who is that?

2 A That's Garkusha.

3 Q So what happened?

4 A Garkusha reviewed what was sent to Pavel or that which  
5 was sent to me -- I don't recall now to who it was sent to --  
6 and he stated, "I don't know what this is. I don't understand  
7 this. I can't -- I can't make sense of this."

8 Q Let me ask you: Why did you ask Garkusha to look at the  
9 information? Why couldn't you do it?

10 A Because I don't have a command of computers, and I don't  
11 have a command of the English language.

12 Q Explain what you mean by you don't have a command of  
13 computers.

14 A I just -- I don't have a command of them. The most I can  
15 do is perhaps access them to maybe read some news.

16 Q Are you able to send e-mails?

17 A I don't send them. I'm able to receive them and -- and  
18 read them.

19 Q Who sends e-mails for you in your business?

20 A I had a secretary. Garkusha took care of a lot of this,  
21 and my son Igor assisted me.

22 Q I'm showing you a photo that's already in evidence as  
23 Government Exhibit 8.

24 Who is this?

25 A That's Igor.

DUBOVOY - DIRECT - MS. NESTOR

1 Q He's your son?

2 A Yes.

3 Q What happened after you asked Garkusha to look at the  
4 information that Pavel, your brother, sent?

5 A Garkusha said that he doesn't know what this is.

6 Q What happened next?

7 A So I called Pavel and said that this is all non-workable.

8 Q What happened next?

9 A Pavel calls me back and says, "Try it again." He says,  
10 "You have a friend Vitaly Korchevsky. Show it to him."

11 Q Did Pavel know Mr. Korchevsky?

12 A He -- he wasn't -- he didn't personally know him, but he  
13 heard of Korchevsky.

14 Q Tell us why.

15 THE INTERPRETER: I'm sorry?

16 Q Tell us why.

17 A Vitaly Korchevsky, everyone knows him. He preaches  
18 everywhere, he travels, and -- and he's known to many.

19 Q Did you contact Mr. Korchevsky?

20 A Yes, I got in contact with Korchevsky.

21 Q At the time you contacted Korchevsky, what was your  
22 understanding of this information that you were getting?

23 A Back at that time, I didn't understand anything.

24 Q What happened?

25 A And we agreed to meet with Korchevsky at the airport in



DUBOVOY - DIRECT - MS. NESTOR

1 Atlanta. He was transiting the airport.

2 Q What do you mean "transiting the airport"?

3 A He was traveling -- he was traveling somewhere further,  
4 but he had two or three hours to meet with us.

5 Q Who is the "us"?

6 A Garkusha was with me also.

7 Q Where did Mr. Korchevsky live?

8 A In Pennsylvania.

9 Q And why couldn't you do this over the phone or by e-mail?

10 A We decided to meet. We hadn't seen each other for a long  
11 period of time and we decided to meet.

12 Q What happened when you met?

13 A We came -- we traveled there with Garkusha. We met with  
14 Korchevsky, Garkusha opened the folder, he showed him the  
15 paperwork.

16 (Continued on the following page.)

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DUBOVOY - DIRECT - MS. NESTOR

1 EXAMINATION BY

2 MS. NESTOR:

3 (Continuing.)

4 Q So approximately when was this?

5 A I don't recall exactly, but the year '10, '11. Don't  
6 remember exactly.

7 Q Where were you meeting?

8 A In the airport on the second floor in the restaurant.

9 Q There's a restaurant on the second floor?

10 A There was one then, yes.

11 Q And you said that Garkusha brought some papers with him?

12 A Yes.

13 Q What papers?

14 A That which Pasha gave him access to. He had printed it  
15 out and he brought them to show it Vitaly.

16 Q Did you ever see what Pavel gave access to? That site  
17 that Pavel gave access to.

18 A I didn't see it.

19 Q Did you review the papers that Garkusha brought for  
20 Korchevsky?

21 A No.

22 Q Why not?

23 A Because I don't read English and I'm not in that  
24 business.

25 Q What business are you referring to?

DUBOVOY - DIRECT - MS. NESTOR

1 A I'm not in the financial business. I was in the  
2 construction business.

3 Q What happened when you met with Korchevsky in the airport  
4 when you met with Garkusha?

5 A Korchevsky looked at it and he said, "This is all  
6 non-workable and we can just access a computer and it would be  
7 all be there."

8 Q But tell us what the conversation was. Why were you  
9 talking about public versus nonpublic?

10 MR. BRILL: Objection.

11 THE COURT: I heard the word objection.

12 MR. BRILL: Yes, your Honor.

13 THE COURT: I'll overrule the objection. Go ahead.

14 Q What was the conversation about at the airport? What  
15 were you actually discussing?

16 A This was so long ago, I don't recall everything exactly.  
17 But we spoke that Pasha gave some type of program. I don't  
18 recall that well.

19 Q Did you communicate to Mr. Korchevsky at the time that  
20 this information was nonpublic?

21 MS. WHALEN: Objection.

22 THE COURT: Sustained as to form. I would like to  
23 hear from the witness. Ask if there was any discussion about  
24 the public nature of the information, something along those  
25 lines.

DUBOVOY - DIRECT - MS. NESTOR

1 EXAMINATION BY

2 MS. NESTOR:

3 (Continuing.)

4 Q Was there any discussion during this meeting about  
5 whether this information was public or nonpublic?

6 A When Vitaly looked at it, he said that all this exists,  
7 it's accessible to everyone as of today.

8 Q What happened next?

9 A We left with Garkusha and Korchevsky flew on.

10 Q What was Garkusha's reaction to this meeting?

11 A Garkusha asked me, "So are you going to get involved in  
12 this?" And I said, "No, I'm not going to be involved in  
13 this." This is all nonsense. This is just another one of  
14 Pasha's bad ideas."

15 Q Is Pasha the same person as Pavel?

16 A Yes.

17 Q What happened next?

18 A We got back to the office and I tell Pavel that this is  
19 non-workable.

20 Q And what happened next?

21 A A couple of days go by. Pavel calls me again. He says,  
22 "Let's give it another look."

23 Q What happens?

24 A He sends these codes to us again and I call Vitaly  
25 Korchevsky. He comes to our office.

DUBOVOY - DIRECT - MS. NESTOR

1 Q He comes from Pennsylvania to Atlanta?

2 A Yes.

3 Q And what happened?

4 A I meet him at the airport and we go to the office.

5 Q And what happened?

6 A We go into Garkusha's office. Garkusha, he accesses the  
7 computer. I think he printed out some papers. He shows  
8 what's on the computer to Vitaly and it ends with Vitaly  
9 saying that all this information is publicly accessible. It's  
10 of no interest to us.

11 Q Did Mr. Korchevsky ever express any concern about the  
12 fact that you were trying to show him non-public information?

13 MR. BRILL: Objection.

14 MS. WHALEN: Objection.

15 THE COURT: There's a delayed reaction here. Can I  
16 hear the question back?

17 MS. NESTOR: I ask whether Mr. Korchevsky ever  
18 expressed any concern that Mr. Dubovoy was trying to show  
19 non-public information.

20 THE COURT: I will overrule the objection, but I  
21 want to hear from this witness. We'll take this answer and  
22 then we'll take our break.

23 THE INTERPRETER: Could you repeat that.

24 Q Did Mr. Korchevsky ever express any concern about the  
25 fact that you were trying to show him non-public information?

SIDEBAR CONFERENCE

1 A No.

2 THE COURT: All right. I'm sorry. Did I cut you  
3 off?

4 THE INTERPRETER: No.

5 THE COURT: Let's take our afternoon break.

6 Don't discuss the case, ladies and gentlemen.

7 (Jury exits courtroom.)

8 THE COURT: While the jury is filling out, can I see  
9 counsel briefly at the sidebar.

10 (Continued on the next page.)

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SIDEBAR CONFERENCE

1 (Sidebar conference held on the record in the  
2 presence of the Court and counsel, out of the hearing of the  
3 jury.)

4 THE COURT: Look, I know this is a little difficult  
5 given the passage of time, given the language and everything  
6 else, but we really do have to hear from this witness, all  
7 right? So keep the leading to an absolute minimum.

8 MS. NESTOR: Absolutely, your Honor.

9 THE COURT: On the other hand, I'd like to give the  
10 jury for the first time some indication as to our pace of how  
11 are we doing.

12 MR. TUCKER: I think that much will depend on the  
13 cross-examination here and the next witness.

14 THE COURT: Not unreasonable.

15 MR. TUCKER: When we sketch it out, we're thinking  
16 we're likely to rest the middle of next so we're on track,  
17 your Honor.

18 MS. WHALEN: Judge, if I could complete my  
19 objection.

20 Twice Ms. Nestor has assumed facts not in evidence.  
21 Twice Ms. Nestor, when she asked him was there any are  
22 indication that Mr. Korchevsky was upset about non-public  
23 information. Everything the witness on his own has said is  
24 that Mr. Korchevsky kept saying it was public information.

25 THE COURT: I didn't apprehend your objection.

PROCEEDINGS

1 MS. WHALEN: I'm sorry.

2 THE COURT: Not your sorry, my sorry. I didn't  
3 realize what I, on balance, as this gets through all  
4 evaporates. I understand your concern.

5 Anybody else tell me I was wrong again? All right.

6 MS. WHALEN: Judge, can we move to strike that last  
7 bit of testimony then?

8 MS. FELDER: Or correct the record.

9 THE COURT: In light of the last answer, do you want  
10 to do that?

11 MS. FELDER: Yes. It's misleading. It's  
12 mischaracterizing what he testified to.

13 THE COURT: Questions I will tell the jury when we  
14 come out. Questions are not evidence.

15 MS. WHALEN: All right.

16 THE COURT: Fair enough?

17 MS. WHALEN: Okay.

18 THE COURT: Ten minutes.

19 (Sidebar discussion concludes.)

20 (Continued on the next page.)

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PROCEEDINGS

1 (In open court.)

2 (Witness leaves the witness stand.)

3 MR. BRILL: Your Honor, in the meantime may we  
4 quickly approach?

5 THE COURT: Come on.

6 (Continued on the next page.)

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1 (Sidebar conference held on the record in the  
2 presence of the Court and counsel, out of the hearing of the  
3 jury.)

4 THE COURT: Yes.

5 MR. BRILL: Thank you, your Honor.

6 So this has to do with the translation on the last  
7 question which was from Ms. Nestor, "Was Mr. Korchevsky  
8 concerned," and our information from people that also speak  
9 the language is that it was translated as "Was Mr. Korchevsky  
10 aware," which is different.

11 THE COURT: Wait a minute. We have certified  
12 interpreters. You can't pick it apart like this. I can't  
13 conduct the trial.

14 Does anybody have any problems with the  
15 certification.

16 MR. BRILL: We don't, and that's why I'm approaching  
17 at this point to inform the Court that this is what we were  
18 told and I guess what I would like to do --

19 THE COURT: By who?

20 MR. BRILL: By someone in Mr. Korchevsky's family.

21 THE COURT: Why are you going to do this to me?  
22 What expect me to?

23 MR. BRILL: I want to bring this to the Court's  
24 attention, and if it happens again -- I wouldn't bring it to  
25 the Court's attention --

SIDEBAR

1 THE COURT: Ms. Mulqueen, this interpreter that just  
2 was working. Was he one of ours?

3 COURTROOM DEPUTY: He's from the U.S. Attorney's  
4 Office.

5 MS. NESTOR: We provided the interpreter, your  
6 Honor.

7 THE COURT: Is he a certified court interpreter?

8 MS. NESTOR: Yes.

9 COURTROOM DEPUTY: Certified.

10 MR. BRILL: I don't dispute that. I just wanted to  
11 make the record on that. I'm not asking the Court to do  
12 anything at this point.

13 THE COURT: Let's keep Mr. Korchevsky -- all of a  
14 sudden Mr. Korchevsky's camp and Mr. Khalupsky's camp or the  
15 Government's camp has a different translation. We can't go  
16 that way. We deal with certified interpreters perhaps this  
17 lady who is about to come on --

18 MS. FELDER: Is she with the U.S. Attorney's Office  
19 or is she from the Court?

20 MS. NESTOR: These interpreters are with the U.S.  
21 Attorney's Office. They are court certified interpreters the  
22 U.S. Attorney's Office has obtained as a result of the Court's  
23 request to obtain court certified interpreter because the  
24 Court was not providing an interpreter.

25 THE COURT: The Court itself doesn't have

1 interpreters. We have an interpreters office, okay? We have  
2 a couple of staff interpreters as you should probably know.  
3 But when we need other languages such as Russian, our court  
4 staff goes out and finds certified Russian or whatever,  
5 Ukrainian, interpreters which is who these people are, I  
6 assume. If there are any continuing difficulties, you'll  
7 bring it to my attention and we'll deal with it. Okay?

8 MR. BRILL: Thank you.

9 (Sidebar discussion concludes.)

10 (Continued on the next page.)  
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DUBOVOY - DIRECT - MS. NESTOR

1 (In open court.)

2 THE COURT: Swear the interpreter.

3 COURTROOM DEPUTY: Raise your right hand.

4 GALINA ANDRACCHIO, having been first duly sworn by the Clerk  
5 of the court to interpret the proceedings from English to  
6 Russian and from Russian to English as follows:

7 THE INTERPRETER: I do.

8 COURTROOM DEPUTY: State your name for the record.

9 THE WITNESS: Galina Andracchio.

10 COURTROOM DEPUTY: Spell it for the record.

11 THE INTERPRETER: G-a-l-i-n-a, A-n-d-r-a-c-c-h-i-o.

12 THE COURT: Okay. Ladies and gentlemen, before we  
13 resume the testimony of the witness, let me make a point  
14 that's important for you to realize and indeed I'll include it  
15 in any final instructions.

16 The questions put to a witness by any lawyer, the  
17 questions themselves are not evidence, all right? Isn't a  
18 fact that the earth is square isn't evidence that the earth is  
19 square, okay? The questions, the substance of the questions,  
20 only become evidence when the witness adopts the substance of  
21 the question by the answer. The questions themselves are not  
22 evidence. Bear that in mind.

23 Go ahead.

24 EXAMINATION BY

25 MS. NESTOR:

(Continuing.)

DUBOVOY - DIRECT - MS. NESTOR

1 Q Thank you, your Honor.

2 Before the break we were talking about what happened  
3 during the meeting in Mr. Garkusha's office between you,  
4 Mr. Garkusha, and Mr. Korchevsky.

5 Do you remember that?

6 A Yes.

7 Q What happened at the end of that meeting?

8 A Vitaly looked at this information and concluded that's  
9 public information it's non-workable.

10 Q What was he looking at in Garkusha's office?

11 A I don't recall exactly, but we were looking at some  
12 information in the computer and Garkusha printed out some  
13 paperwork.

14 Q Now, you previously testified that Pavel sent you codes.  
15 Do you recall that?

16 A Yes, I do recall.

17 Q I'd like to show the witness, your Honor,  
18 Government Exhibit 214 and 214-T which are not yet in  
19 evidence.

20 MS. NESTOR: Your Honor, before we proceed, I would  
21 like to make a point. The jurors all have binders on their  
22 chairs. Because the witness only reads in Russian, we're  
23 going to have -- the juror binders have both the original and  
24 the translation. I will keep the original Russian e-mail on  
25 the Elmo.

DUBOVOY - DIRECT - MS. NESTOR

1 THE COURT: All right. But direct your attention  
2 only to the exhibit that we are using at this particular time  
3 these have not yet been introduced into evidence so hold your  
4 attention.

5 MS. NESTOR: Thank you, your Honor.

6 Q Exhibit 214 on the screen for the witness only.

7 Who is this e-mail from?

8 A Pavel Dubovoy to me.

9 Q Do you recall this e-mail?

10 A Yes.

11 (Continued on the next page.)  
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DUBOVOY - DIRECT - MS. NESTOR

1 BY MS. NESTOR:

2 Q And it was an email that was sent from Pavel Dubovoy to  
3 you; is that correct?

4 THE INTERPRETER: Can you repeat?

5 Q It was an email that was sent from Pavel Dubovoy to you?

6 A Yes.

7 MS. NESTOR: Now at this time, the Government moves  
8 to admit Government Exhibit 214 and 214-C, which is the  
9 translation.

10 THE COURT: Any objections.

11 MR. BRILL: No objection.

12 THE COURT: Received.

13 (Government Exhibit 214 & 214C, was received in  
14 evidence.)

15 MS. NESTOR: And the jury could just turn to --  
16 could you turn to Tab 214? All the binders are marked with  
17 exhibit numbers. The first email in the binder 214 is in  
18 Russian, and the one after is the translation. The jurors  
19 should refer to 214-C, translation. The witness will keep  
20 referring to 214 for the record testify.

21 BY MS. NESTOR:

22 Q Can you please tell us what this email is?

23 A It's an email from Russia with a code that you have to  
24 use to get into the system and look at it. That's what he  
25 sends to me.



DUBOVOY - DIRECT - MS. NESTOR

1 Q When you say "the system," what are you talking about.

2 A You have to go -- you have to access the computer fr the  
3 info.

4 Q And when you say "look at it," I believe is what the  
5 witness said, what do you mean?

6 A As I understand -- as I understood when you access --  
7 when you access that information from there, so by accessing  
8 that -- by answering that -- that field, you are accessing the  
9 information that you are able to obtain earlier than the rest  
10 of the people.

11 Q What happened next after this meeting in Garkusha's  
12 office?

13 A Vitaly left, and I don't recall if -- what at that  
14 specific time or later on, we passed him the code. I don't  
15 recall how that -- how that occurred.

16 Q What happened next?

17 A And then some period of time passed. Vitaly give me a  
18 ring and indicate that this was working information.

19 Q What does that mean?

20 A That we are able to work on the stock market with that.

21 Q What happened next?

22 A And he asked me if I have some sum of money. I looked in  
23 the account and put that sum on the account, provided access  
24 to my account, and I should purchase a computer and send it to  
25 him.

DUBOVOY - DIRECT - MS. NESTOR

1 Q At this point in time, did you understand where this  
2 information was coming from?

3 A Back then I didn't understand. I understood later on.

4 Q Tell us what you understood later on.

5 A When I went to Ukraine, I was able to discover that  
6 information is coming from hackers.

7 Q Tell us how you were about to discover that.

8 THE COURT: I didn't hear what you said. Able to  
9 discover that this information...

10 THE INTERPRETER: Hackers.

11 THE COURT: Would you hold that microphone up?

12 THE INTERPRETER: Hacker.

13 THE COURT: Okay.

14 I'm sorry. Go ahead.

15 MS. NESTOR: I'm sorry.

16 BY MS. NESTOR:

17 Q All right. So tell us what happened when you went to the  
18 Ukraine.

19 A I went to Ukraine and Pavel introduced me to a person  
20 named Roman. Based on his conversation, I concluded that he  
21 had some guy for doing it.

22 Q When you say, "based on his conversation," the  
23 conversation with whom?

24 A With me, when we talked with Roman.

25 Q When was that?

DUBOVOY - DIRECT - MS. NESTOR

1 A It was in 2011. I don't recall.

2 Q Did you ever have a conversation with Mr. Korchevsky  
3 about your conversation with Roman?

4 A No.

5 Q What did you discuss with Mr. Korchevsky about where the  
6 information was coming from?

7 MR. BRILL: Objection.

8 THE COURT: Overruled.

9 A I told him that the information is coming from the guy,  
10 but we talked about it later. Yes, but later on, we did kind  
11 of discuss that.

12 Q When you say, "the guy," what do you mean?

13 A Hackers.

14 Q Why do you call him "the guy"?

15 A That's what we called them.

16 Q But there Russian words for the guy that you used?

17 A Simply guys.

18 Q Did you ever use the word "Patsani"?

19 A Yes, but I mean, we used.

20 Q Can you spell it for the court reporter?

21 A P-A -- I can spell, yes.

22 Q That's fine.

23 (Pause in proceedings.)

24 BY MS. NESTOR:

25 Q Well, let me ask you: What happened after you met with

DUBOVOY - DIRECT - MS. NESTOR

1 Roman?

2 A When we met, Roman informed us that we have to pay the  
3 guy, the "Patsani," for his kind service.

4 Q Now, you testified that you had opened up a brokerage  
5 account for Mr. Korchevsky to trade in; is that correct?

6 A Yes.

7 Q You also testified that he asked for a laptop; is that  
8 correct?

9 A Yes.

10 Q Why do you need a laptop?

11 A Simply to work. I don't know.

12 Q Why couldn't you use a phone?

13 MR. BRILL: Objection.

14 THE COURT: Sustained. Next question.

15 BY MS. NESTOR:

16 Q Did you ask for anything else?

17 A He asked for iPad and a phone number -- and a -- and a  
18 phone to write.

19 Q Did you purchase those items?

20 A Yes.

21 Q Did you personally purchase them?

22 A No.

23 Q Who bought them?

24 A The computer was purchased by my son, Igor. And iPad was  
25 purchased by a worked from my office Sergei Nerchin

DUBOVOY - DIRECT - MS. NESTOR

1 [phonetic]. And the phone, I don't recall who did. I think  
2 maybe Igor or Sergei.

3 Q Do you know where Korchevsky traded from?

4 MR. BRILL: Objection.

5 THE COURT: To the question?

6 MR. BRILL: Yes.

7 THE COURT: No, I will permit it.

8 A Once again with the question, please?

9 Q Do you know where Korchevsky traded from?

10 A What I know, he was doing trading from Ukraine.

11 Q Tell us about that.

12 A I was renting a hotel for him for trading. I was  
13 providing an apartment for trading for him.

14 Q Tell us how that all came about.

15 A He was the -- going there, was doing trading within two,  
16 three weeks, then he was coming back.

17 Q Are you aware one way or the other whether that was the  
18 only place he was trading?

19 A No, I don't know.

20 Q The trading in the Ukraine, why would you provide the  
21 apartment or the hotel?

22 A Because he was trading my money.

23 Q Did you come to understand what the information, the  
24 stolen information was that you were trading on?

25 A Yes, of course, I understood.

DUBOVOY - DIRECT - MS. NESTOR

1 Q How did you learn that?

2 A I understood we obtained this information early, and a  
3 certain period of time, then it's accessible by public.

4 Q What is "this information" that you are talking about?

5 A Quarter report.

6 Q Of what?

7 A A company.

8 Q Did you and Mr. Korchevsky ever have conversations about  
9 this?

10 A We didn't discuss it thoroughly but, like, briefly.

11 Q Tell us about that.

12 A That really give this information earlier than the rest  
13 of the people. That it's a good deal for work.

14 Q Did Mr. Korchevsky ever call you and complain or ask any  
15 questions about the information?

16 A Yes. Sometimes that information wasn't working, and he  
17 would call and ask why it was not working.

18 Q What would you do?

19 A I called Pavel.

20 Q Why?

21 A So Pavel can ask Roman why it's not working.

22 Q And what would happen?

23 A And then information was currently working and sometimes  
24 it wasn't again.

25 Q So it's fair to say that there were times when it was

DUBOVOY - DIRECT - MS. NESTOR

1 working and times when it wasn't?

2 A Yes.

3 Q Tell us about Mr. Khalupsky, how did he get involved in  
4 this?

5 A When I started cooperating with Korchevsky I went to  
6 Ukraine and Pavel sold his trading company here. Let's try to  
7 work with Vladislav Khalupsky.

8 Q At the time that Pavel suggested that you do that, did  
9 you know who Mr. Khalupsky?

10 A No, I don't know.

11 Q So Pavel introduced you?

12 A Yes, Pavel introduced us.

13 Q Where did Mr. Khalupsky live at that time?

14 A In the Ukraine.

15 Q Do you know what he did for a living?

16 A He was -- he owns his own trading company.

17 Q Do you remember what it was called?

18 A Dolphin.

19 Q Do you know what Mr. Khalupsky's background was?

20 THE INTERPRETER: Background?

21 Q Do you know what Mr. Khalupsky's background was?

22 A I knew that he lived in the United States and he's a  
23 broker himself.

24 Q And just to be clear: At what point did he live in the  
25 United States?

DUBOVOY - DIRECT - MS. NESTOR

1 A I can't answer that.

2 Q At the time you met him, where was he living?

3 A In Odessa, Ukraine.

4 Q On that trip to Ukraine, did you meet Mr. Khalupsky?

5 A Yes, we did. When we met at his office, Pavel introduced  
6 us.

7 Q Tell us about the meeting.

8 A Well, we basically told him that we have this type of  
9 program and we can work together.

10 Q Be more specific, if there is anything else. What else  
11 was the conversation about?

12 A We explained to him since we knew this arrangement, it  
13 was quarter reports accessible by us earlier than by public.

14 Q When you said you met at his company, which company was  
15 that?

16 A Dolphin.

17 Q What happened?

18 A And Roman decided to -- to work together.

19 Q What was the discussion; what was the agreement?

20 A That I provide my account, my -- my account for trading.  
21 We will give access to the account and Pavel provide him with  
22 a code.

23 Q Now, did Mr. Khalupsky trade in the same account as  
24 Mr. Korchevsky?

25 A (No audible response.)



DUBOVOY - DIRECT - MS. NESTOR

1 Q Did Mr. Khalupsky trade in the same account as  
2 Mr. Korchevsky?

3 A No.

4 Q Where was he trading?

5 A Different account.

6 Q Did you open up another account?

7 A Yes.

8 Q Did you ever have a discussion with Mr. Khalupsky about  
9 who was trading in the account that you had opened for him?

10 A I did not understand the question.

11 Q I'll re-ask it.

12 Did you and Mr. Khalupsky ever discuss who would be  
13 trading in the account that you opened up?

14 A That he will be using it for trading, all his people.

15 Q What do you mean, "his people"?

16 A He had a company and many people worked for him at that  
17 period of time.

18 Q Did you ever meet any of his employees?

19 A When we were there, one guy walked in, and we showed this  
20 to him.

21 Q Be specific, what did you show him?

22 A I don't recall now, but I -- I think we saw the code that  
23 he can use to access information.

24 Q At the time that Mr. Korchevsky and Mr. Khalupsky were  
25 trading your account, did you have a number of accounts?

DUBOVOY - DIRECT - MS. NESTOR

1 A What accounts do you mean, trading accounts?

2 Q Yes.

3 A Only accounts that they used for trading.

4 Q I'm asking, was that more than two?

5 A More than two.

6 Q Do you remember all of them sitting here today?

7 A (No audible response.)

8 Q Do you remember all of them sitting here today?

9 A No, I don't recall.

10 Q Were there some accounts that were in your name?

11 A Yes.

12 Q Where there some that were in the name of your  
13 businesses?

14 A Yes.

15 Q At the time that Mr. Khalupsky and Mr. Korchevsky were  
16 trading your accounts, which businesses did you own?

17 A I had the real estate business.

18 Q What was the name of that business?

19 A APD Custom Homes.

20 Q Did you ever own a company named Boni?

21 A Yes, Boni.

22 Q What is Boni?

23 A That's the company Boni that's -- that was ice cream  
24 company.

25 Q Was Boni in operation at that time?

DUBOVOY - DIRECT - MS. NESTOR

1 A Yes.

2 Q Now, did you and Mr. Khalupsky -- going back to  
3 Mr. Khalupsky. Did you and Mr. Khalupsky discuss how the  
4 agreement would work?

5 A Yes. I asked him to provide special paperwork, because  
6 when you do trading from the Ukraine, they block the account.

7 Q Explain. What do you mean?

8 A When Mr. Khalupsky was purchasing stock from Ukraine,  
9 they would see coming from Ukraine and was blocked, the  
10 account.

11 Q You said you asked him to do what?

12 A I asked Mr. Khalupsky to provide special paper that he  
13 invest, it belong -- I can show the document to the bank and  
14 say that Mr. Khalupsky and I, we have good relationship, trust  
15 in relationship.

16 Q I want to show you what's been marked for identification  
17 only as Government Exhibit 805?

18 MS. NESTOR: This is not in the jury binders,  
19 Your Honor.

20 BY MS. NESTOR:

21 Q Do you recognize Exhibit 805?

22 A Yes, it's my signature.

23 Q What do you recognize it to be?

24 A I don't receive this, but I understand that the  
25 document --

DUBOVOY - DIRECT - MS. NESTOR

1 MS. WHALEN: Objection.

2 THE COURT: I'm sorry?

3 MS. WHALEN: Objection.

4 THE COURT: Yes, sustained.

5 Do we have the Russian translation here.

6 MS. NESTOR: Your Honor, could we have a sidebar?

7 THE COURT: Sure.

8 (Continued on the next page.)

9 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 MS. NESTOR: I think I understand.

3 THE COURT: Come over here.

4 MS. NESTOR: I'm sorry, Your Honor.

5 THE COURT: Everyone has to get in the conversation.

6 MS. NESTOR: I think I understand Ms. Whalen's  
7 objection. This witness has identified this document as one  
8 he recognizes with his signature on it. He's unable to read  
9 it, but he can testify that Mr. Khalupsky previously  
10 translated the document for him, and --

11 MS. WHALEN: He recognizes his signature. If he  
12 doesn't read English, Mr. Khalupsky could have translated a  
13 thousand documents for him. He has no way of knowing if this  
14 is the specific one.

15 MS. NESTOR: I disagree, Your Honor.

16 THE COURT: If he says he recognizes this document,  
17 ask --

18 MS. NESTOR: That's correct.

19 MS. WHALEN: He said he recognizes the signature.

20 THE COURT: I thought I heard you say he knows his  
21 signature so he can testify to that. I heard you just say he  
22 recognizes this document.

23 MS. NESTOR: Your Honor, this document has been  
24 shown to him before in preparation for trial. This document  
25 has been shown to him before in preparation. It has been

SIDEBAR CONFERENCE

1 translated for him.

2 THE COURT: Where is this going?

3 MS. NESTOR: He understands what the document is.

4 We just stated that he does not read English, meaning he  
5 cannot read the document into the record.

6 MS. WHALEN: But then I think the document should  
7 be prohibited, because if he doesn't know that this is the  
8 document --

9 THE COURT: Well, but if it's been translated to him  
10 and he recalls signing the document, he can testify to it. I  
11 think this establishes a -- let's set a foundation for it  
12 before we admit it.

13 MS. NESTOR: Sure, Your Honor.

14 (End of sidebar conference.)

15 (Continued on the next page.)  
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DUBOVOY - DIRECT - MS. NESTOR

1 (In open court.)

2 BY MS. NESTOR:

3 Q Mr. Dubovoy, have you recently seen this document?

4 A Before when? What?

5 Q Did you previously see this document at the time that  
6 Mr. Khalupsky presented it to you?

7 A No, Khalupsky provided me with it and that's it.

8 Q Is this the document Mr. Khalupsky provided you?

9 A Yes.

10 MS. NESTOR: At this time the Government seeks to  
11 admit Government's Exhibit 805 into evidence.

12 THE COURT: Not speaking English or reading English,  
13 looking at that document, how do you know it's the document  
14 that Mr. Khalupsky showed to you?

15 THE WITNESS: My signature is there.

16 THE COURT: Your signature I assume, sir, is on a  
17 lot of documents. How do you know this particular document is  
18 a document shown to you by Mr. Khalupsky?

19 THE WITNESS: I see my name there, Arkadiy Dubovoy.  
20 It's written here, Arkadiy Dubovoy.

21 THE COURT: I'm not questioning your signature or  
22 the fact that your name is typed there, I'm asking you a  
23 different question.

24 When you look at the text of the document, you can't  
25 read what that says, correct?

DUBOVOY - DIRECT - MS. NESTOR

1 THE WITNESS: I've been living in the states for 20  
2 years, I understand a little bit.

3 THE COURT: What do you understand about this  
4 document?

5 THE WITNESS: When Khalupsky translated this for me,  
6 it says that I authorized him to manage my account. And that  
7 he can execute purchases. And that he has full access and  
8 permission to access my account.

9 MS. NESTOR: Your Honor, may I turn the page?

10 THE WITNESS: And the reason I specifically recall  
11 this is because this document, this document was always on my  
12 desk in my office.

13 THE COURT: You want to turn the page?

14 MS. NESTOR: Sure, your Honor.

15 BY MS. NESTOR:

16 Q Mr. Dubovoy, do you remember the second page of this  
17 document?

18 A Yes.

19 Q Did Mr. Khalupsky provide you with this as well?

20 A Yes.

21 MS. NESTOR: At this time we seek to admit  
22 Government's Exhibit 805.

23 MS. WHALEN: Your Honor, I still object. I don't  
24 think proper foundation has been laid.

25 THE COURT: I understand.



DUBOVOY - DIRECT - MS. NESTOR

1 When was the last time it was translated for you?

2 THE WITNESS: Well, specifically a week ago.

3 THE COURT: Uh-huh.

4 THE WITNESS: Ms. Julia's office.

5 THE COURT: This particular document was translated  
6 for you?

7 THE WITNESS: Yes.

8 THE COURT: I'll receive it.

9 MS. NESTOR: Thank you, your Honor.

10 THE COURT: 805 now in evidence.

11 (Government Exhibit 805, was received in evidence.)

12 THE COURT: I want to remind the jury that the fact  
13 that I engaged the witness, there is nothing about this  
14 document, the significance of it, the evidentiary worth of it.  
15 I'm just dealing with some legal issues related to the  
16 admissibility of it in light of counsel's objection. All  
17 right. Don't read anything into that. Go ahead.

18 MS. NESTOR: Thank you, your Honor.

19 BY MS. NESTOR:

20 Q Mr. Dubovoy, who's signature is that at the bottom of the  
21 document?

22 A Mine.

23 Q What is the date on this document, if you know?

24 A The first of August, 2011.

25 Q How do you know it's the first of August?

DUBOVOY - DIRECT - MS. NESTOR

1 A Because it's the eighth month and in the Ukraine they  
2 write the month and the date.

3 Q Mr. Dubovoy, is this a trading agreement that you were  
4 testifying about before with Mr. Khalupsky?

5 A Yes.

6 MS. NESTOR: Your Honor, with your permission I'd  
7 like to read it into evidence and have it translated.

8 THE COURT: Go ahead.

9 MS. NESTOR: "I Arkadiy P. Dubovoy the undersigned  
10 here by authorize Vladyslav Khalups'kyy full discretionary  
11 accounts. To buy, sell, including short sales, and trade in  
12 stocks, bonds, put and call options, and other securities on  
13 American Trade. I agree to indemnify and hold Vladyslav  
14 Khalups'kyy harmless of any losses. And any and all acts  
15 carried out by Vladyslav Khalups'kyy on my behalf shall have  
16 the same effect as acts of my own."

17 BY MS. NESTOR:

18 Q I'm going to show you the next page, briefly who is that?

19 A Khalupsky Vladyslav.

20 Q Tell us, I'm going to ask you what stocks bonds, puts and  
21 call options are?

22 A No, I don't know.

23 Q What happened when you signed this document?

24 A Khalupsky traded using my account.

25 Q I'm sorry, my question was different. What happened

DUBOVOY - DIRECT - MS. NESTOR

1 during signing this document? What was the conversation?

2 A That he will be trading using my accounts based on the  
3 information that he was, that he was given by Pavel.

4 Q When was this document signed, before or after  
5 Mr. Khalupsky started trading in your accounts?

6 A After.

7 Q Who drafted this document?

8 A Khalupsky gave it to me to sign.

9 Q And where were you when Khalupsky gave it to you to sign?

10 A In Khalupsky's office.

11 Q Just to be clear, are you were you able to read this  
12 document?

13 A No, I was not. Khalupsky translated it for me.

14 Q When Mr. Khalupsky started trading in your accounts, was  
15 Mr. Korchevsky still trading on the stolen information in your  
16 accounts?

17 A Yes.

18 Q As far as you know, did Korchevsky know about Khalupsky?

19 A I didn't say anything, I don't know.

20 Q As far as you know, did Mr. Khalupsky know about  
21 Mr. Korchevsky?

22 A No.

23 Q You were intentionally trying to keep them away from each  
24 other?

25 A Yes.

DUBOVOY - DIRECT - MS. NESTOR

1 Q Explain that?

2 A We wanted to see who was better at trading. And to  
3 introduce Khalupsky to Korchevsky, they are different people,  
4 they have different interests.

5 Q So I'm sorry, let me unpack that. You eventually asked  
6 Mr. Khalupsky to do this, why?

7 A Could you ask the question again?

8 Q Sure. At the time you asked Mr. Khalupsky to trade in  
9 your accounts, why were you asking him to do it when you  
10 already had Mr. Korchevsky?

11 A I wanted to see who does it better.

12 Q Then you also testified that they were different people  
13 so you didn't want to introduce them, what did you mean by  
14 that?

15 A Khalupsky is interested in tennis, sport. Korchevsky is  
16 a paster, a preacher. And I don't know, it didn't workout to  
17 introduce them to each other.

18 Q I want to talk to you about the hackers for a minute.  
19 Were the hackers being paid?

20 A Yes.

21 Q How?

22 A I had an account where there was 700,000, and they asked  
23 that they receive 50 percent of what was earned in that  
24 account.

25 Q Did they have access to the account?

DUBOVOY - DIRECT - MS. NESTOR

1 A Pavel had access. Whether they had access, I don't know.

2 Q Pavel, your brother?

3 A Yes.

4 Q You said they were asking for a percentage of what?

5 A From the earnings, from the profit.

6 Q When you say account, do you mean a brokerage account?

7 A Yes.

8 Q So they were asking, the hackers were being paid a  
9 percentage of the brokerage account; is that right?

10 A That which the 700,000 will earn, 50 percent of that.

11 Q Do you mean earn on trading?

12 A Yes.

13 Q How were the hackers actually paid?

14 A They were paid weekly.

15 Q Who paid them?

16 A I paid, I paid, I paid my brother and he paid.

17 Q He paid the hackers?

18 A There was a middle-man between the hackers and Pavel.

19 Q Who was that?

20 A Roma.

21 Q Is that the Roma you said you met in Ukraine?

22 A Yes.

23 Q Explain what Roma's role was?

24 A Roma was the middle-man between the hackers and Pavel.

25 Q What do you mean by middle-man?

DUBOVOY - DIRECT - MS. NESTOR

1 A Only he had dealings with the hackers, and Pavel did  
2 everything through Roma.

3 Q How would you get money to Pavel?

4 A It varied. I wired money. It varied, whatever way it  
5 would work out.

6 Q What other ways are there?

7 A Cash, transfers.

8 Q How would you get cash to Pavel?

9 A We have a company in the Ukraine and I would take it and  
10 it would be given to him.

11 Q Did you use any particular companies from which you wired  
12 the money to Pavel?

13 A From what I recall it seems we wired money from Boni.

14 Q Who would actually do the wires?

15 A I would delegate it to my son, Igor. And also Larissa  
16 from the office would do some of the transfers.

17 Q Did you or Mr. Korchevsky ever discuss how much money the  
18 hackers were asking for?

19 A I told him 700,000 that I paid 50 percent of the profit.

20 Q You told him about the account was 700,000?

21 A Yes.

22 Q Why were you discussing this with Korchevsky?

23 A Because I wasn't earning anything on this account.

24 Q What was Mr. Korchevsky's reaction to what you told him?

25 A Nothing, but, that we need to work with the guys.

DUBOVOY - DIRECT - MS. NESTOR

1 Q Did you discuss paying the hackers with Mr. Khalupsky?

2 A I don't remember.

3 Q Now you testified the hackers had access to one of your  
4 brokerage accounts, did they have access to all of your  
5 accounts?

6 A I don't know whether they had access or whether they  
7 didn't have access. I know that Pavel had access.

8 Q My question -- I'm sorry. My question is, whether you  
9 paid them from just one account or all the accounts you were  
10 trading in?

11 A No, only from one.

12 Q I want to show you what is marked for identification only  
13 Government's Exhibit 244. Can you see that?

14 A Yes.

15 Q Do you recognize this e-mail?

16 A Yes.

17 Q Who is it from?

18 A That's Pavel sending it to me.

19 Q Is that on February 3rd, 2012?

20 A Yes.

21 MS. NESTOR: Your Honor, at this time the Government  
22 moves to admit Government's Exhibit 244 and Government's  
23 Exhibit 244T.

24 THE COURT: Any objection? Received 244 and 244T.

25 (Government Exhibit 244 & 244T, was received in

DUBOVOY - DIRECT - MS. NESTOR

1 evidence.)

2 MS. NESTOR: The jury could flip in their binder,  
3 there is a 244 tab.

4 Q I'd like to direct your attention to -- what is the  
5 subject?

6 A This is an accounting.

7 Q And I want to direct your attention to this line that  
8 says Carese Trade and Invest. Is this a payment on March 2,  
9 2012?

10 A Yes.

11 Q Is it for 160,000?

12 A Yes.

13 Q Is it to Carese Trade and Invest?

14 A Yes.

15 Q And who is name is in parenthesis there?

16 A That's Vlad in Russian.

17 Q Who is Vlad?

18 A Vlad Khalupsky.

19 Q This is a payment of \$160,000 to Mr. Khalupsky?

20 A Yes.

21 Q Can you tell me sitting here today what this payment is  
22 for?

23 A I don't remember specifically, it was 2012. But I paid  
24 Khalupsky for his trading, work for his trading, I paid him  
25 his percentage.



DUBOVOY - DIRECT - MS. NESTOR

1 Q And directing you to this line right here, a payment on  
2 March 2, 2012, for \$95,000, to Trudo Solution LLP, who is this  
3 payment to?

4 A That's to Patsani, Roma, that's the hackers.

5 Q Again, you use that term that you used before, Patsani,  
6 what does that mean?

7 A That's what we called Roma.

8 Q That's what you called Roma, the intermediary between the  
9 hackers and you?

10 A Yes.

11 MS. NESTOR: Your Honor, I'm about to go to a  
12 lengthy your document.

13 THE COURT: We'll break for the day. I told you  
14 during jury selection that I would give you from time to time  
15 how we were progressing. This is very preliminary, but we're  
16 doing quite well. I'll have a more specific report for you  
17 later in the week before we break for the weekend, but rest  
18 assured we are on or ahead of schedule, with the cooperation  
19 of all the attorneys.

20 Finally, once again, I renew any admonition not to  
21 discuss the case with anyone. Please be careful. And have a  
22 good night and get some rest. See you 9:30 in the morning.

23 COURTROOM DEPUTY: All rise.

24 (Jury exits.)

25 THE COURT: All have a seat for just a moment. The

PROCEEDINGS

1 witness is excused for the time being. 9:00 o'clock tomorrow  
2 morning, please.

3 (Whereupon, the witness steps down.)

4 THE COURT: What do we anticipate tomorrow, assuming  
5 we finish with this witness?

6 MS. NESTOR: One moment, your Honor. Your Honor, I  
7 submit I probably have with the translation I'm guessing  
8 another two hours at least tomorrow. I anticipate cross will  
9 take sometime, but that's up to defense counsel.

10 After that we will be calling Brian Hayes from CBP  
11 to discuss travel records, your Honor, and Eugene Canjels is  
12 the expert. I do not believe we'll get past that, your Honor.

13 THE COURT: Okay. Then have a pleasant evening.

14 MR. TUCKER: I apologize, can I make a very brief  
15 record on very brief point?

16 THE COURT: Sure.

17 MR. TUCKER: So the Government received in the  
18 middle of Mr. Dubovoy's testimony some additional documents  
19 pertaining to what we've been calling the Latvian matter.  
20 They are older than the documents we've already disclosed,  
21 they date back to 2015, the fall of 2015.

22 I have read them quickly in Court. They are  
23 certainly not 3500 material as best I can tell. They are not,  
24 they don't undermine anything that Igor Dubovoy said, frankly  
25 quite the contrary. But given where we are, I have copies

PROCEEDINGS

1 printed. I'm going to provide them to defense counsel now.

2 Just one request, given that these pertain to MLAT  
3 from the Latvian Government, the DOJ of International Affairs  
4 is puzzling over whether they were provided to the U.S.  
5 Government with some kind of confidentiality request. They  
6 bear no confidentiality request on them. Certainly the fact  
7 of this investigation is now known both to Igor Dubovoy and to  
8 the public more broadly. I request that we make these  
9 disclosures subject to the Court's protective order that is  
10 already in place, which would preclude the parties from  
11 disseminating them publicly, things of that nature.

12 THE COURT: I assume there is no objection to that  
13 pending further discussion.

14 MS. WHALEN: Not pending further discussion, your  
15 Honor.

16 MR. BRILL: No objection.

17 THE COURT: All right. Yes, so provide them with  
18 that. Anything else?

19 MR. TUCKER: That's it for the Government, your  
20 Honor. I have a copy for the Court as well.

21 THE COURT: See you in the morning.

22 (Proceedings to resume on June 20, 2018 at 9:30  
23 a.m.)  
24  
25

I N D E X

WITNESS PAGE

DAVID HAAPAOJA

DIRECT EXAMINATION	BY MS. NESTOR	1326
CROSS-EXAMINATION	BY MR. HEALY	1347
CROSS-EXAMINATION	BY MS. FELDER	1364
REDIRECT EXAMINATION	BY MS. NESTOR	1366
RECROSS-EXAMINATION	BY MS. FELDER	1367

ROBERT DE MACEDO SOARES

DIRECT EXAMINATION	BY MR. TUCKER	1369
CROSS-EXAMINATION	BY MR. HEALY	1387
CROSS-EXAMINATION	BY MS. FELDER	1394

MARTIN FEIL

DIRECT EXAMINATION	BY MR. TUCKER	1396
--------------------	---------------	------

KELLY CUNNINGHAM

DIRECT EXAMINATION	BY MR. GOPSTEIN	1403
CROSS-EXAMINATION	BY MS. BRILL	1411
REDIRECT EXAMINATION	BY MR. GOPSTEIN	1421
RECROSS-EXAMINATION	BY MS. BRILL	1422

THOMAS CAROCCI

DIRECT EXAMINATION	BY MR. GOPSTEIN	1425
CROSS-EXAMINATION	BY MR. BRILL	1457
CROSS-EXAMINATION	BY MS. WHALEN	1473
REDIRECT EXAMINATION	BY MR. GOPSTEIN	1488

ARKADIY DUBOVOY

DIRECT EXAMINATION	BY MS. NESTOR	1492
--------------------	---------------	------

I N D E X

EXHIBITS

GOVERNMENT	PAGE
803	1337
845	1341
803-1	1343
801	1399
423	1407
814	1448
815	1452
1008-2	1475
214 & 214C	1521
805	1538
244 & 244T	1544